

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of	)	FILE NO. 952-3275
	)	
APPLE COMPUTER, INC.,	)	
	)	AGREEMENT CONTAINING
a corporation.	)	CONSENT ORDER TO
	)	CEASE AND DESIST
	)	
	)	

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The Federal Trade Commission having initiated an investigation of certain acts and practices of Apple Computer, Inc., ("Apple" or "proposed respondent") a corporation, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between Apple Computer, Inc., a corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Apple is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at One Infinite Loop, Cupertino, California.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this

agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### ORDER

##### I.

IT IS ORDERED that respondent, Apple Computer, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any computer hardware product, in or affecting commerce, as

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the availability of any microprocessor upgrade product.

II.

IT IS FURTHER ORDERED that respondent, Apple Computer, Inc. a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any computer hardware product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product is currently upgradeable, unless at the time such representation is made, the upgrade is then available, in reasonable quantities to the public, given good-faith projections of anticipated demand.

III.

IT IS FURTHER ORDERED that respondent, Apple Computer, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any microprocessor upgrade product that incorporates a new logic board as part of the upgrade product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall not represent that such product is an "upgrade," in any manner, expressly or by implication, unless it discloses, clearly and prominently, and in close proximity to the representation, that a new logic board is a component of the upgrade product.

IV.

- A. Within five (5) days of the date of service on respondent of this order, respondent shall publish notice of this redress provision in a nationally circulated newspaper. This notice shall be in the form set out in Appendix A.
- B. Within ten (10) days of the date of service on respondent of this order, respondent shall compile:
  1. A mailing list containing the name and last known address of each consumer who purchased a Performa 550, Macintosh LC 550, or Performa 560 computer in the United States or in a territory of the United States on or after April 1, 1994; and

2. A mailing list containing the name and last known address of each consumer who purchased a PowerPC upgrade for a Performa 550, Macintosh LC 550, or Performa 560 computer in the United States or in a territory of the United States.
- C. Respondent shall compile the lists required by Parts IV.B.1 and IV.B.2 from all customer service records under its control, including, but not limited to, registration cards, telephone logs, electronic mail logs, and written correspondence.
  - D. Within fifteen(15) days of the date of service of this order, respondent shall send via first class-mail, postage prepaid, a notice in the form set forth in Appendix B to this order, to all Performa 550, Macintosh LC 550, or Performa 560 purchasers listed on the mailing list required by Part IV.B.1. Respondent shall send the items set forth in Appendix B via electronic mail to any purchaser for whom respondent has only an electronic mail address. No information other than that contained in Appendix B shall be included. No additional materials, other than a postage pre-paid envelope for return of the offer form, shall be transmitted therewith.
  - E. The envelope containing the items set forth in Appendix B shall be in the form set forth in Appendix C to this order. For each mailing returned by the U.S. Postal Service as undeliverable for which respondent thereafter obtains a corrected address, respondent shall, within fifteen (15) business days after receiving the corrected address, send the items set forth in Appendix B to the corrected address.
  - F. Any consumer who, within seventy-five(75) days of the date of service of this order, returns to respondent both: 1) the form contained in Appendix A or Appendix B; and 2) payment in the amount of five hundred and ninety-nine (599) dollars, will be eligible to receive a PowerPC Upgrade Kit, or its equivalent. Apple will not be required to honor any request that is postmarked after the seventy-fifth day.
  - G. Respondent shall send, delivery charges prepaid, the PowerPC Upgrade Kit by common carrier appropriate to the fragility of the product, within ninety (90) days of the date of service of this order.
  - H. If respondent chooses to provide a product equivalent to the PowerPC Upgrade Kit to some consumers, those consumers will be chosen at random. In those cases,

respondent shall arrange for these consumers to obtain the equivalent product at the authorized Apple dealer of the consumer's choice. Respondent shall arrange for that dealer to transfer from the consumer's Performa 550, Macintosh LC 550, or Performa 560 to the equivalent product: (1) all programs and data from the hard drive; and (2) any peripherals or memory with which the consumer had upgraded their original system. Respondent shall also arrange for the dealer to test the equivalent product after the hardware and software transfer to ensure the functionality of all such transfers. All services performed pursuant to this paragraph shall be at respondent's expense.

- I. Respondent shall extend the warranty on the Performa 550, Macintosh LC 550, and Performa 560 to include all parts and labor charges necessary for installation of a PowerPC Upgrade Kit. Within thirty (30) days of the date of service of this order, respondent shall arrange for its authorized service locations to perform this installation. Respondent shall also provide each location with any installation instructions that they might not otherwise possess which are unique to the installation of a PowerPC Upgrade Kit.
- J. Within fifteen (15) days of the date of service of this order, respondent shall send via first class-mail, postage prepaid, a notice in the form set forth in Appendix D to this order to each purchaser listed on the mailing list required by Part IV.B.2. No information other than that contained in Appendix D shall be included. No additional materials, other than a postage pre-paid envelope for return of the offer form, shall be transmitted therewith. Respondent shall send seven hundred and seventy-six (776) dollars to each consumer who, within seventy-five (75) days of service of this order, returns the form contained in Appendix D and either: (1) has previously submitted the registration card included in the PowerPC upgrade; or (2) provides reasonable proof of purchase of the PowerPC upgrade.
- K. The envelope containing the items set forth in Appendix D shall be in the form set forth in Appendix E to this order. For each mailing returned by the U.S. Postal Service as undeliverable for which respondent thereafter obtains a corrected address, respondent shall, within fifteen (15) business days after receiving the corrected address, send the items set forth in Appendix D.

- L. Respondent shall adequately staff an 800 number to answer questions from any consumer who receives a notice described in this redress provision, and any questions resulting from the publication of the notice described in Part III.A.
- M. Within two hundred forty (240) days of the date of service of this order, respondent shall furnish to Commission staff the following:
  - 1. In computer readable form and in computer print out form, the following:
    - a. A list of the names and addresses of all purchasers who obtain a PowerPC Upgrade Kit (or the equivalent) pursuant to this order;
    - b. A list of the names and addresses of all recipients of rebate checks;
    - c. A copy of the records used to identify these purchasers or recipients; and
    - d. A description of what respondent sent to each purchaser or recipient (including the check number if applicable) and the mailing date of every upgrade or rebate sent.
  - 2. Copies of all notices returned to respondent as undeliverable (previously described in Parts IV.E and IV.K of this order); and
  - 3. All other documents and records evidencing efforts made and actions taken by respondent to identify, locate, contact and provide rebates or upgrades to consumers.
- N. For the purposes of this Part, "PowerPC Upgrade Kit" includes a 575 logic board, an upgrade card, four megabytes of RAM, Macintosh System 7.5 Operating System software, the most recent version of Claris Works for PowerPC, and a coupon for free installation of the hardware components of the PowerPC Upgrade Kit. The term "equivalent" means a computer based on the PowerPC microprocessor along with all the hardware necessary to supply a Performa 550, Macintosh LC 550, or Performa 560 owner with a complete computer system, including but not limited to a comparable keyboard and monitor. The term "consumer" includes an educational institution or any other organization.

V.

IT IS FURTHER ORDERED that for three (3) years after the last date of dissemination of any representation covered by this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

VI.

IT IS FURTHER ORDERED that respondent notify the Commission at least thirty (30) days prior to any proposed change in the company such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

VII.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals and directors; to all current and future officers and managers with responsibilities or duties affecting compliance with the terms of this order; and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and, for a period of five (5) years from the date of issuance of this order, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that this order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; **provided, however,** that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

**Provided further,** that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IX.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days from the date of service of this order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

APPLE COMPUTER, INC.

By

\_\_\_\_\_  
John Floisand  
Senior Vice President  
Apple Computer, Inc.  
20400 Stevens Creek Boulevard  
Cupertino, California 95014

\_\_\_\_\_  
John B. Douglas III, Esq.  
General Counsel  
Apple Computer, Inc.  
20400 Stevens Creek Boulevard  
Cupertino, California 95014

Counsel for the Respondent



FEDERAL TRADE COMMISSION

By

\_\_\_\_\_  
Matthew D. Gold  
Linda K. Badger

Counsel for the Federal Trade Commission

APPROVED:

\_\_\_\_\_  
Jeffrey Klurfeld, Director  
San Francisco Regional Office

[Newspaper Notice]

**NOTICE TO PURCHASERS OF APPLE PERFORMA 550,  
MACINTOSH LC 550 AND PERFORMA 560 COMPUTERS:**

IF YOU PURCHASED AN APPLE PERFORMA 550, A MACINTOSH LC550 OR A PERFORMA 560 COMPUTER ON OR AFTER APRIL 1, 1994, YOU ARE ENTITLED TO PURCHASE A POWERPC UPGRADE KIT OR ITS EQUIVALENT FOR THE SUM OF \$599.00.

When we sold you your Apple computer, we advertised that it was "Ready for PowerPC upgrade." While a PowerPC upgrade was subsequently offered for these models, the Federal Trade Commission ("FTC") and Apple have examined the representations that Apple made in connection with the sales of these models. While Apple believes that the upgrade representations were appropriate, customer satisfaction is our highest priority and, to this end, we have reached a settlement with the FTC that gives purchasers of these computers who would like to upgrade their computers an opportunity to secure a PowerPC upgrade at an attractive price.

For a limited time, Apple is offering its Performa 550/560 and Macintosh LC 550 customers a PowerPC upgrade kit for \$599. This upgrade kit will include the components necessary to make the PowerPC upgrade, and will also include an additional 4 megabytes of RAM. In addition, the kit will contain System 7.5 (the operating system for the PowerPC), and a PowerPC upgrade for Claris Works. Included in the upgrade kit will be a coupon for the installation of the hardware components of the upgrade by an authorized Apple reseller at no additional cost to you.

To take advantage of this offer, please fill out the information on the attached form and return it, along with a payment in the amount of \$599. You may wish to make a copy of the form for your records. Upon receipt of payment and a properly completed form, Apple will ship the upgrade kit directly to you within approximately 90 days.

For customers who purchased a PowerPC upgrade for their Performa 550/560 or Macintosh LC 550 prior to [date of service of order], Apple is offering a cash rebate upon certification and proof of purchase. For additional information on this rebate offer, please contact Apple at the toll-free number noted below.

Please note that these offers are being made for a limited time only. To receive an upgrade kit at this price, customers must respond with payment and a properly completed form, postmarked no later than [70 days from date of publication]. You should also note that this upgrade opportunity is only available to customers who purchased Performa 550/560 and Macintosh LC 550 computers after April 1, 1994.

Should you have any questions regarding this upgrade offer, please call 1-800- \_\_\_\_-\_\_\_\_

APPLE COMPUTER, INC.

\_\_\_\_\_  
[Form to be Attached to Newspaper Notice]

RETURN THIS FORM WITH YOUR PAYMENT TO THE FOLLOWING ADDRESS:  
[ADDRESS]

I am the purchaser of a Performa 550/ Performa 560/ Macintosh LC 550 (circle the correct model number) computer. I understand that I must have purchased my computer after April 1, 1994 to participate in this offer and that I must include the serial number of my computer with my order. I would like to order a PowerPC Upgrade Kit. Please deliver my purchase to the following address:

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

\_\_\_\_ My check for \$599.00 is enclosed (make checks payable to Apple Computer, Inc.)

\_\_\_\_ Please charge my \_\_\_\_ Visa \_\_\_\_ MasterCard \_\_\_\_ American Express

\_\_\_\_\_  
Credit Card Number

\_\_\_\_\_  
Expiration Date

I hereby certify that I bought an Apple Performa 550, Performa 560 or Macintosh LC 550 in \_\_\_\_\_ (month you purchased your computer), \_\_\_\_ (year you purchased your computer). The serial number of my computer is \_\_\_\_\_ .

DATED: \_\_\_\_\_, 1997.

\_\_\_\_\_  
Signature

[Apple Americas Letterhead]

[Date]

Re: Performa 550/560/Macintosh LC 550 Upgrade Offer

Dear [Customer Name]:

Our records show that during 1994 or 1995, you purchased a Performa 550, a Macintosh LC 550 or a Performa 560 from Apple Computer, Inc.

When we sold you your Apple computer, we advertised that it was "Ready for PowerPC upgrade." While a PowerPC upgrade was subsequently offered for these models, the Federal Trade Commission ("FTC") and Apple have examined the representations that Apple made in connection with the sales of these models. While Apple believes that the upgrade representations were appropriate, customer satisfaction is our highest priority and, to this end, we have reached a settlement with the FTC that gives purchasers of these computers who would like to upgrade their computers an opportunity to secure a PowerPC upgrade at an attractive price.

For a limited time, Apple is offering its Performa 550/560 and Macintosh LC 550 customers a PowerPC upgrade kit for \$599. This upgrade kit will include the components necessary to make the PowerPC upgrade, and will also include an additional 4 megabytes of RAM which will allow the PowerPC chip to operate effectively. In addition, the kit will contain two key software packages: System 7.5, the operating system for the PowerPC; and the PowerPC upgrade for Claris Works. Included in the upgrade kit will be a coupon which will cover the cost of installing the upgrade's hardware components. Upon receiving your upgrade kit, you will only need to take your computer, the upgrade kit and the upgrade coupon to your local authorized Apple dealer, who will install the hardware for you at no additional cost.

To take advantage of this offer, please fill out the information on the enclosed form and return it, along with a payment in the amount of \$599. You may wish to make a copy of the form for your records. Upon receipt of payment and a properly completed form, Apple will ship the upgrade kit directly to you within approximately 75 days.

Please note that this offer is being made for a limited time only and that to receive an upgrade kit at this price, customers must respond with payment and a properly completed form by no later than [75 days from date of service of order]. Because of the limited availability of upgrade kits, we will not be able to extend this deadline, and we will not be offering this upgrade opportunity in the

future. You should also note that this upgrade opportunity is only available to customers who purchased Performa 550/560 and Macintosh LC 550 computers after April 1, 1994. Should you have any questions regarding this upgrade offer, please call our information line at 1(800) --. As always, we at Apple view customer satisfaction as our most important product. We appreciate your choosing Apple and look forward to serving you again in the future.

Sincerely,

Robin Abrams  
Vice-President and General Manager  
Apple Americas

**RETURN THIS FORM WITH PAYMENT  
(AN ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE)**

I am the purchaser of a Performa 550 / 560 / Macintosh LC 550  
(circle the correct model number) computer. I understand that I must  
have purchased my computer after April 1, 1994, to participate in this  
offer and that I must include the serial number of my computer with my  
order. I would like a PowerPC Upgrade Kit. Please deliver my purchase  
to the following address:

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

\_\_\_\_\_ My check for \$599 is enclosed (make checks payable to Apple  
Computer, Inc.)

\_\_\_\_\_ Please charge my \_\_\_\_\_ Visa \_\_\_\_\_ Master Card \_\_\_\_\_ American Express

\_\_\_\_\_  
Credit Card Number

\_\_\_\_\_  
Expiration Date

I hereby certify that I bought an Apple Performa 550, Performa 560  
or Macintosh LC 550 in \_\_\_\_\_ (month you purchased your  
computer), \_\_\_\_\_ (year you purchased your computer). The serial  
number of my computer is \_\_\_\_\_ .

DATED: \_\_\_\_\_, 1997.

\_\_\_\_\_  
Signature

Apple Americas  
[address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[ADDRESS]

**ATTENTION: IMPORTANT POWERPC UPGRADE OFFER  
FOR YOUR PERFORMA 550, MACINTOSH LC 550,  
OR PERFORMA 560 COMPUTER INSIDE**

[Apple Americas Letterhead]

[Date]

Re: Performa 550/560/Macintosh LC 550 Upgrade Rebate

Dear [Customer Name]:

Our records show that during 1994 or 1995, you purchased a PowerPC upgrade for either a Performa 550, a Macintosh LC 550 or a Performa 560 computer.

When we sold you your Apple computer, we advertised that it was "Ready for PowerPC upgrade." For the past several months, the Federal Trade Commission ("FTC") and Apple have examined the upgrade representations that Apple made in connection with the sales of these models. While Apple believes that the upgrade representations were appropriate, customer satisfaction is our highest priority and, to this end, we have reached a settlement with the FTC which will give purchasers of these computers who have not yet upgraded their computers an opportunity to secure a PowerPC upgrade at an attractive price.

Both we and the FTC believe that it is appropriate and fair to provide customers who have already purchased a PowerPC upgrade a cash rebate in order to put them on an equal footing with customers taking advantage of the new upgrade offer. Accordingly, we would ask that you fill out the enclosed form, verifying that you did, in fact, purchase a PowerPC upgrade for a Performa 550, a Macintosh LC 550 or a Performa 560 computer. Upon receipt of your completed form and proof of purchase, Apple will mail you a check in the amount of \$776 to the address designated on your form. (Proof of purchase is not required for customers who filled out and mailed to Apple the registration card included in the PowerPC upgrade). Please note that this offer is being made for a limited time only and that to receive a cash rebate qualified customers must respond with a completed form and proof of purchase by no later than [75 days from date of service of order]. Should you have any questions regarding this rebate offer, please call our information line at 1(800) --.

As always, we at Apple view customer satisfaction as our most important product. We appreciate your choosing Apple and look forward to serving you again in the future.

Sincerely,

Robin Abrams  
Vice President and General Manager  
Apple Americas



**RETURN THIS FORM TO RECEIVE REBATE  
(AN ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE)**

My name is \_\_\_\_\_ . I purchased a PowerPC upgrade for a Performa 550 / 560 / Macintosh LC 550 computer (circle the correct model number). I understand that Apple is prepared to provide a rebate of \$776.00 for those who purchased PowerPC upgrades for these computers and that to be entitled to the rebate, customers must have either registered the upgrade with Apple at the time of purchase or now provide proof of purchase.

Please Check One:

\_\_\_\_\_ I previously filled out and mailed the registration card that accompanied my Power PC upgrade to Apple Computer, Inc.

\_\_\_\_\_ I did not fill out the registration card when I received my PowerPC upgrade, but I have enclosed proof-of-purchase (receipt, canceled check, credit card charge, or original packing list or original label from PowerPC upgrade box).

Please deliver my rebate check to the following address:

NAME:

STREET ADDRESS:

CITY/STATE/ZIP

\_\_\_\_\_  
Signature

Apple Americas  
[address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[Address]

**ATTENTION: CASH REBATE OFFER ENCLOSED FOR  
POWERPC UPGRADE PURCHASERS**

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

\_\_\_\_\_) )  
In the Matter of ) )  
APPLE COMPUTER, INC., ) )  
a corporation. ) ) DOCKET NO.  
\_\_\_\_\_) )

COMPLAINT

The Federal Trade Commission, having reason to believe that Apple Computer, Inc., ("Apple" or "respondent"), a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Apple is a California corporation with its offices and principal place of business located at One Infinite Loop, Cupertino, California.

PARAGRAPH TWO: Apple has manufactured, advertised, labeled, offered for sale, sold, and distributed the "Performa 550," "Macintosh LC 550," and "Performa 560" personal computers, and other computer hardware and software to consumers. The Performa 550, Macintosh LC 550, and Performa 560 models are based on the Motorola 68030 microprocessor. While continuing to promote the sale of these computers, respondent introduced a new series of computers based on the faster, more powerful "PowerPC" microprocessor. Beginning approximately April 1, 1994, subsequent to this introduction of the new chip, respondent advertised Performa 550, Macintosh LC 550, and Performa 560 computers as upgradeable to PowerPC performance.

PARAGRAPH THREE: The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PARAGRAPH FOUR: Respondent disseminated or caused to be disseminated advertisements for the "PowerPC" upgrade to the Performa 550 and Performa 560 computers, including but not necessarily limited to a red sticker that was placed on the boxes containing these computers, attached as Exhibit A. These

advertisements contain the following statement:

"Ready for PowerPC upgrade." [Exhibit A]

PARAGRAPH FIVE: Respondent disseminated or caused to be disseminated advertisements for the "PowerPC" upgrade to the Performa 550, Macintosh LC 550, and Performa 560 computers, including but not necessarily limited to the attached Exhibits B-D. These advertisements contain the following statements:

- A. "And when you're ready to expand your [Macintosh LC 550] system for more performance, you can install an optional CD-ROM drive, add an Ethernet card, or upgrade to our new Power Macintosh™ technology."

[Exhibit B (Print: "Apple Education Recommended Products At a Glance")]

- B. **"Can a personal computer grow up with your family?"**

With technology changing so quickly, it's only natural to wonder whether the computer you buy today will become obsolete tomorrow. That's why Apple designed the Macintosh Performa to work as well tomorrow as it does today.

. . .

You can even add extra memory or upgrade your Performa to the PowerPC chip (making it virtually impossible to outgrow).

**Performa**  
**The Family Macintosh**

[Exhibit C (Print: "Can a personal computer grow up with your family?")]

- C. "A PARENT'S GUIDE TO COMPUTERS

. . .

Every Performa can grow with your family. Each one has enough memory, power, and storage space to serve your family for years. However, should you decide you want to upgrade in the future, you can expand your Performa's RAM, hard drive storage, and even

microprocessor to keep step with improvements in technology (such as the hot new PowerPC chip)."

[Exhibit D (Special Advertising Section insert: "A Parent's Guide To Computers.")]

PARAGRAPH SIX: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that a PowerPC upgrade was available to consumers at the time that they purchased a Performa 550 or Performa 560 computer.

PARAGRAPH SEVEN: In truth and in fact, a PowerPC upgrade was not available to consumers at the time that they purchased a Performa 550 or Performa 560 computer. Therefore, the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH EIGHT: Through the use of the statements contained in the advertisements referred to in PARAGRAPHS FOUR and FIVE, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondent has represented, directly or by implication, that a PowerPC upgrade would be available within a reasonable period of time after the purchase of a Performa 550, Macintosh LC 550, or Performa 560 computer.

PARAGRAPH NINE: In truth and in fact, the PowerPC upgrade was not available within a reasonable period of time after the purchase of a Performa 550, Macintosh LC 550, or Performa 560 computer. No such upgrade was offered by respondent for at least one year after it began representing that the Performa 550, Macintosh LC 550, or Performa 560 computers were upgradeable. Indeed, by the time respondent made the upgrade available, the cost of the upgrade approached the cost of an entirely new computer with a PowerPC microprocessor. Therefore, the representation set forth in PARAGRAPH EIGHT was, and is, false and misleading.

PARAGRAPH TEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPHS FOUR and FIVE, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondent has represented, directly or by implication, that at the time it made the representations set forth in PARAGRAPHS SIX and EIGHT, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH ELEVEN: In truth and in fact, at the time it made the representations set forth in PARAGRAPHS SIX and EIGHT, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH TEN was, and is, false and misleading.

PARAGRAPH TWELVE: In its advertising of the Performa 550, Macintosh LC 550, and Performa 560 computers, respondent represented that these computers were upgradeable to PowerPC technology. Respondent failed to disclose that, in order to obtain the PowerPC technology, consumers would need to purchase and install an upgrade package that included not only a PowerPC upgrade card, but also a new logic board. As a result, consumers were not aware that they would have to incur the cost and inconvenience associated with the replacement of the logic board. The fact that a logic board was a component of the upgrade package would be material to consumers in their decision to purchase the computer. The failure to disclose this fact, in light of the representations made, was a deceptive practice.

PARAGRAPH THIRTEEN: The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, on this \_\_\_\_\_ day of \_\_\_\_\_, 1997, has issued this complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

[Exhibits A-D attached to paper copies of complaint, but not available in electronic form.]

ANALYSIS OF PROPOSED CONSENT  
ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Apple Computer, Inc. (hereinafter "Apple" or "respondent"). Apple is a major manufacturer and marketer of personal computer hardware and software products.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter has focused on Apple's advertisements for the "Performa 550," "Macintosh LC 550," and "Performa 560" personal computers. The Performa 550, Macintosh LC 550, and Performa 560 models are based on the Motorola 68030 microprocessor. While continuing to promote the sale of these computers, respondent introduced a new series of computers based on the faster, more powerful "PowerPC" microprocessor.

Beginning on or about April 1, 1994, subsequent to the introduction of the PowerPC microprocessor, respondent advertised Performa 550, Macintosh LC 550, and Performa 560 computers as upgradeable to PowerPC performance. A PowerPC upgrade, however, was not offered for at least one year after Apple began representing that these computers were upgradeable. Further, by the time Apple made the upgrade available, its price approached the cost of an entirely new computer with a PowerPC microprocessor.

The proposed complaint alleges that Apple made false claims that: 1) a PowerPC upgrade was available to consumers at the time that they purchased a Performa 550 or Performa 560 computer; and 2) a PowerPC upgrade would be available within a reasonable period of time after the purchase of a Performa 550, Macintosh LC 550, or Performa 560 computer.

The proposed complaint further alleges that Apple deceptively failed to disclose that the PowerPC upgrade package for the Performa 550, Macintosh LC 550, or Performa 560 computers would include not only a PowerPC upgrade card, but also a new logic board. As a result, the complaint alleges, consumers were not aware that they would have to incur the cost and inconvenience

associated with the replacement of the logic board.

Part I of the proposed order prohibits Apple from misrepresenting the availability of any microprocessor upgrade product. Part II of the proposed order prohibits Apple from representing that any computer hardware product is currently upgradeable, unless at the time such representation is made, the upgrade is then available, in reasonable quantities to the public, given good-faith projections of anticipated demand.

Parts III and IV of the proposed order address Apple's failure to disclose that the upgrade product for the Performa 550, Macintosh LC 550, or Performa 560 computers would include a new logic board in addition to an upgrade card. Part III provides that Apple, when marketing any microprocessor upgrade product that incorporates a new logic board, may not represent that such product is an "upgrade," unless it clearly and prominently discloses that a new logic board is a component of the upgrade product.

Part IV of the proposed order prescribes a redress program under which Apple is required to offer a PowerPC Upgrade Kit for the reduced price of \$599 to consumers who purchased a Performa 550, 560 or Macintosh LC 550 computer after Apple began advertising them as upgradeable. Under Part IV, the kit will include all of the hardware necessary for the upgrade, as well as four megabytes of RAM, two essential pieces of PowerPC software, and a coupon for free installation of the upgrade redeemable at any authorized Apple service location.

Under Part IV, Apple has the option of providing eligible consumers with a new PowerPC system in lieu of the upgrade kit. This provision is designed to protect consumers if Apple runs out of the hardware necessary to build the upgrade kits. Any consumer who receives a new system will have to return the old computer to an authorized Apple dealer. Apple will then be responsible for arranging for the dealer to transfer all the consumer's data and peripherals to the new PowerPC, and for testing the new system to make certain that it is functional.

To compensate the consumers who have already purchased an upgrade for one of the relevant computers, Part IV of the proposed order requires Apple to rebate \$776.00 of the original purchase price of \$1,375.00.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file



one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.