

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

INPHONIC, INC.,
a corporation

FILE NO. 062-3066

AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of InPhonic, Inc., a corporation (“InPhonic” or “proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between InPhonic, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent InPhonic is a Delaware corporation with its principal office or place of business at 1010 Wisconsin Avenue, NW, Suite 600, Washington, DC 20007.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
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 complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify 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 proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order 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 of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. 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. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "respondent" shall mean InPhonic, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. "Rebate" shall mean a check, cash, credit towards future purchases, or any other consideration offered to consumers who purchase products or services, and which is to be

provided, subsequent to the purchase, to consumers who submit a request for redemption after satisfying the terms and conditions of the offer.

3. “Clearly and prominently” shall mean as follows:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.
 - b. In a print advertisement, promotional material (including, but not limited to a rebate coupon or form), or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.
 - c. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

4. “Required rebate documentation” shall mean rebate coupons or forms, receipts, UPC codes, or other materials intended to be supplied by respondent to consumers and which consumers must include as part of a properly completed rebate request.

5. “Eligible purchaser” shall mean each consumer: 1) who was a bona fide purchaser of an InPhonic product for which a rebate was being offered from October 1, 2004 to the present; 2) who submitted a request for such a rebate prior to twelve (12) weeks before the date of service of this order; 3) whose InPhonic rebate has not been paid as of the date of service of this order; and

- a. whose request was denied solely on the basis of one or more of the following reasons:
 - i. the consumer changed his/her wireless phone number;
 - ii. the signature on the rebate form was illegible;
 - iii. the respondent failed to provide the consumer with required information or documents;
 - iv. the email address was missing from the rebate form; or
 - v. the request was late due to the consumer’s submission of a fourth wireless bill; or
- b. whose request was denied for any curable deficiency but the consumer was not given at least thirty (30) days to resubmit the request.

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

I.

IT IS ORDERED that respondent, 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 product or service sold to consumers, in or affecting commerce, shall not make any representation in any advertisement about the amount of any rebate available to purchasers of such product or service, or about the after-rebate cost of such product or service, unless respondent:

- A. discloses, clearly and prominently:
 - 1. any time period that consumers must wait before submitting a rebate request;
 - 2. that consumers who change their wireless phone numbers after purchase are disqualified from receiving a rebate, if such is the case;

3. that any rebate submission that does not strictly comply with all rebate terms and conditions, or that is deemed in any way illegible, may be rejected with little or no opportunity to resubmit, if such is the case;
 4. any requirement for submitting bills, records, or any other documentation, with a rebate request;
 5. when consumers can expect to receive their rebates; and
 6. that an email address is required to be eligible for the rebate, if such is the case; and
- B. discloses on the rebate coupon or form, clearly and prominently, all terms, conditions, or other limitations of the rebate offer.

II.

IT IS FURTHER ORDERED that respondent, 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 product or service sold to consumers, in or affecting commerce, shall not:

- A. misrepresent, in any manner, expressly or by implication, what bills, records, or other documentation that consumers must submit with any rebate request; or
- B. misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of, or reasons for, any delay in providing any rebate.

III.

IT IS FURTHER ORDERED that respondent, 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 product or service sold to consumers, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that consumers will have the opportunity to resubmit deficient rebate requests, unless respondent provides such consumers a reasonable period of time in which to resubmit such rebate requests and notifies them precisely how to correct any deficiencies.

IV.

IT IS FURTHER ORDERED that respondent, 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 product or service sold to consumers, in or affecting commerce, shall not:

- A. fail to provide, or to make reasonably available to consumers, all required rebate documentation;
- B. make any representation, in any manner, expressly or by implication, about the time in which any rebate will be mailed, or otherwise provided to purchasers unless, at the time the representation is made, respondent has a reasonable basis for such representation; or
- C. fail to provide any rebate within the time specified or, if no time is specified, within thirty (30) days of receiving a properly completed request for such rebate.

V.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall, in accordance with this Part, provide a rebate to each eligible purchaser.

- A. Within ten (10) business days from the date of service of this order, respondent shall compile (1) a mailing list or database containing the name and last known mailing address of each eligible purchaser, and (2) the rebate amount(s) each such person is owed. In addition, respondent shall retain a National Change of Address System (“NCOA”) licensee to update this list by processing the list through the NCOA database.
- B. Within thirty (30) business days from the date of service of this order, respondent shall mail via first-class mail, postage prepaid, a check for the rebate amount(s) owed to each eligible purchaser whose name appears on the list or database required by sub-part A of this Part. Respondent shall also send a notice in the form set forth in Appendix A to this order to each such eligible purchaser. No materials, other than the rebate check and the notice, shall be transmitted therewith.
- C. The envelope containing the items set forth in sub-part B of this Part shall substantially be in the form set forth in Appendix B to this order. For each

mailing returned by the U.S. Postal Service as undeliverable for which respondents thereafter obtains a corrected address, respondents shall, within fifteen (15) business days after receiving the corrected address, send the items set forth in sub-part B of this Part to the corrected address.

- D. For a period of seventy-five (75) days from the date of service of this order, respondent shall mail via first-class mail, postage prepaid, the rebate amount(s) owed to each eligible purchaser who has not been provided a rebate pursuant to sub-part B of this Part, and who contacts the respondent or the Commission in any manner. Each such rebate shall be mailed within ten (10) business days after the respondent receives such person's name and contact information.
- E. The rebate checks distributed under this Part shall contain on the back of the checks the following general release language:

“Release: By my endorsement of this check I affirm that I am entitled to one or more rebates that I previously requested from InPhonic, Inc., and I hereby relinquish and forever discharge InPhonic, Inc., its subsidiaries, assigns, officers, directors, employees, and agents, for any and all claims that I have against them with regard to the rebate(s) for which I am being paid.”

This language shall be in a prominent type thickness and in a type size no smaller than twelve (12) point type. The language shall be of a color or shade that readily contrasts with the background of the check.

- F. Within one hundred fifty (150) days from the date of service of this order, respondent shall furnish to Commission staff the following:
1. The mailing list or database required by sub-part A of this Part in computer readable form;
 2. In computer readable form, a list of the names and addresses of all consumers who were sent rebate checks pursuant to this Part, and for each name included on the list, the amount, check number, and mailing date of every rebate check sent;
 3. In computer readable form, a list of the names and addresses of all consumers who contacted respondent or were referred to respondent by the Commission in accordance with sub-part D of this Part;

4. Copies of all correspondence and other communications to, from, or concerning all consumers who, after the date of service of this order, requested a rebate pursuant to this Part but were refused, and the reason(s) for denying the rebate;
5. In computer readable form, a list of the names and addresses of all consumers whose rebate checks were returned to respondent as undeliverable; and
6. All other documents and records evidencing efforts made and actions taken by respondent to identify, locate, contact, and provide funds to consumers pursuant to this Part.

VI.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. A specimen copy of all advertisements or rebate forms containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All written or electronic complaints relating to rebates (whether received directly, indirectly or through any third party) and any responses to those complaints.

VII.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives whose duties include the exercise of managerial responsibility with respect to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade 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.

X.

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 Part 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 Part.

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 Part as though the complaint had never been 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.

Signed this _____ day of April, 2007

InPhonic, Inc.

By: _____
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LYDIA B. PARNES
Director
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[InPhonic, Inc. Letterhead]

[Date]

Re: The Enclosed Rebate Check

Dear [Customer Name]:

Our records show that during the period from October 1, 2004 to the present, you purchased a cellular phone with service from InPhonic or one of its affiliated companies. You also applied for, but never received, a rebate in the amount of [amount of check].

InPhonic has entered into a settlement with the Federal Trade Commission regarding certain of its rebate offers. We are sending you the enclosed check in accordance with that agreement.

Please note: BY ENDORSING THE CHECK, YOU ARE AFFIRMING THAT YOU ARE ENTITLED TO ONE OR MORE REBATES, AND ARE AGREEING THAT YOU HAVE NO FURTHER CLAIMS AGAINST INPHONIC (OR ANY OF ITS SUBSIDIARIES, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) WITH REGARD TO THE REBATE(S) FOR WHICH YOU ARE BEING PAID.

For more information on this agreement, go to [link to FTC web page contain InPhonic press release].

Sincerely,

InPhonic, Inc.

InPhonic, Inc.
[Address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[Customer Address]

ATTENTION: IMPORTANT REBATE INFORMATION
REGARDING YOUR INPHONIC CELL PHONE PURCHASE