

Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of InPhonic, Inc., File No. 062-3066

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from InPhonic, Inc. (“InPhonic”).

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

InPhonic, located in Washington, D.C., is an online marketer of wireless telephone packages. Each wireless telephone package includes a name-brand wireless device and a wireless service contract with a national or regional wireless carrier. This matter concerns allegedly deceptive and unfair practices regarding InPhonic’s advertised mail-in rebates.

The FTC complaint alleges that in representing that substantial mail-in rebates were available to purchasers of its wireless telephone packages, InPhonic failed to disclose, or failed to adequately disclose that: 1) consumers would not be able to submit a rebate request until at least three or six months after purchase; 2) consumers would be required to submit wireless bills establishing three or six months of continuous wireless service in good standing; 3) consumers would not receive their rebate check until approximately six or nine months after purchase; 4) an email address would be required to be eligible for the rebate; 5) consumers who changed their wireless phone numbers after purchase would be disqualified from receiving a rebate; and 6) any rebate submission that did not strictly comply with all rebate terms and conditions or that was deemed in any way illegible could be rejected with little or no opportunity to resubmit. The complaint alleges that the failure to disclose or adequately disclose these material facts is a deceptive practice.

The complaint also alleges that InPhonic misrepresented that consumers seeking to redeem its “customer appreciation rebate” needed to establish that their first three months of wireless service had been paid in full. According to the complaint, numerous consumers who waited to submit their fourth wireless bill in order to establish that their first three months of wireless service had been paid in full were unable to submit the rebate request within the 120-day time period specified in the offer, and InPhonic rejected such rebate requests as untimely. The complaint further alleges that InPhonic misrepresented that consumers whose rebate requests contained missing, incorrect, or illegible information would be given a reasonable opportunity to resubmit their request.

According to the FTC complaint, in numerous cases, InPhonic rejected rebate requests, or consumers were prevented from submitting valid requests, because InPhonic failed to supply to consumers with one or more pieces of required documentation and consumers, despite their best efforts, were unable to obtain such documentation from InPhonic. According to the complaint, many consumers did not receive the required rebate redemption form, a box containing a required

UPC code, and/or a required “Guide to Wireless Service” and, despite repeated attempts to contact respondent, were unable to obtain the documentation. The complaint alleges that this constitutes an unfair practice.

Finally, according to the complaint, InPhonic promised to provide consumers with rebate checks within 12 weeks of rebate submission, if they purchased a wireless phone and service plan, and submitted a valid rebate request with supporting documentation. The complaint alleges that after receiving rebate requests in conformance with these terms, InPhonic extended the time period in which it would deliver the rebates without consumers agreeing to this extension of time and failed to deliver the rebates to consumers within the promised time period. According to the complaint, this constitutes an unfair business practice.

The proposed consent order contains provisions designed to prevent InPhonic from engaging in similar acts and practices in the future and to redress consumers. Part I.A. of the proposed order prohibits InPhonic from making a claim about the amount of any rebate, unless it discloses, clearly and conspicuously, unavoidably, and prior to consumers incurring any financial obligation: any time period that consumers must wait before submitting a rebate request; that consumers who change their wireless phone numbers after purchase are disqualified from receiving a rebate, if that is the case; 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 that is the case; any requirement for submitting bills, records, or any other documentation, with a rebate request; when consumers can expect to receive their rebates; and that an email address is required to be eligible for the rebate, if that is the case. Part I.B. of the proposed order prohibits InPhonic from making a claim about the amount of any rebate unless it also discloses, clearly and prominently, on any rebate coupon or form, all terms, conditions, or other limitations of the rebate offer.

Part II of the proposed order prevents InPhonic from misrepresenting what documentation consumers must submit with any rebate request and from misrepresenting any material terms of any rebate program.

Part III of the proposed order prohibits InPhonic from representing that consumers will have the opportunity to resubmit deficient rebate requests, unless it gives consumers a reasonable period of time in which to resubmit such requests and notifies them precisely how to correct any deficiencies.

Part IV.A. of the proposed order prohibits InPhonic from failing to provide, or to make reasonably available to consumers, all required rebate documentation. Part IV.B. prohibits InPhonic from making any representation about the time in which any rebate will be mailed, or otherwise provided to purchasers, unless it has a reasonable basis for the representation at the time it is made. Part IV.C. prohibits InPhonic from failing to provide any rebate within the time specified or, if no time is specified, within thirty days.

Part V of the proposed order requires InPhonic to send rebates to eligible purchasers. Eligible purchasers include consumers whose rebate requests were previously denied solely on the basis of one or more of the following reasons: 1) the consumer changed his/her wireless phone number; 2) the signature on the rebate form was illegible; 3) InPhonic failed to provide the consumer with required information or documents; 4) the email address was missing from the rebate form; or 5) the request was late due to the consumer's submission of a fourth wireless bill. In addition, eligible purchasers include consumers whose requests were denied due to a curable deficiency, but where the consumer was not given at least thirty days to resubmit the request.

Parts VI through IX of the proposed order are reporting and compliance provisions. Part X of the proposed order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

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