

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

_____)	
In the Matter of)	
)	
KMART CORPORATION,)	
KMART SERVICES CORPORATION,)	DOCKET NO. C-4197
and)	
KMART PROMOTIONS, LLC,)	
corporations.)	
_____)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Kmart Corporation, Kmart Services Corporation, and Kmart Promotions, LLC (collectively, “respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Kmart Corporation is a Michigan corporation with its principal office or place of business at 3333 Beverly Road, Hoffman Estates, IL 60179.
2. Respondent Kmart Services Corporation is an Ohio corporation with its principal office or place of business at 3333 Beverly Road, Hoffman Estates, IL 60179.
3. Respondent Kmart Promotions LLC is a Virginia corporation with its principal office or place of business at 3333 Beverly Road, Hoffman Estates, IL 60179.
4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
5. Since at least 2003, respondents have advertised, sold, and distributed the Kmart Gift Card and Kmart Cash Card (hereinafter, collectively referred to as the “Kmart Gift Card”) through their retail stores, the Kmart.com Web site, and through third parties.

6. The Kmart Gift Card is a plastic, stored-value card, similar in size and shape to a credit or debit card, that can be used to purchase goods or services from Kmart retail locations.
7. Respondents represent that a consumer can redeem the Kmart Gift Card for goods or services of an equal value to the monetary amount placed on the card. For example, respondents sell the Kmart Gift Card in stores and on the Kmart.com Web site in specific denominations for exact amounts (*e.g.*, a \$25 Kmart Gift Card costs \$25, etc.). Kmart Gift Cards are often branded with monetary amounts on the front of the cards. Additionally, respondents claim that the Kmart Gift Card is equivalent to cash, branding several as “Kmart Cash Cards.” In some instances, respondents sell the Kmart Gift Card affixed to cardstock that states that consumers can “use [the card] like cash at all Kmart locations.”
8. When a Kmart Gift Card was not used for 24 consecutive months, respondents deducted a fee of \$2.10 for *each* of the past 24 months, resulting in an immediate reduction of \$50.40 from the value of the Kmart Gift Card. Respondents describe the fee (hereinafter, “dormancy fee” or “fee”), on the back of the cards, using the following language: “after 24 months of non-use, a \$2.10 per month service fee will be deducted from your balance in arrears until the card is used or depleted.” In those instances where the balance of any Kmart Gift Card was less than \$50.40, the application of the dormancy fee reduced the card’s balance to zero.
9. In numerous instances, respondents failed to disclose or failed to disclose adequately the dormancy fee by, among other practices:
 - a. Disclosing the dormancy fee in small print (approximately five point font) on the back of the Kmart Gift Card, imbedded in a paragraph of “Terms and Conditions” (*See Attachment A*);
 - b. Affixing the Kmart Gift Card to cardstock that completely obscures the disclosure on the back of the card;
 - c. Failing to use understandable language and syntax to describe the dormancy fee; and/or
 - d. Selling Kmart Gift Cards on the Kmart.com Web site, without disclosing to consumers at the time of purchase that a dormancy fee may apply to the card.
10. In numerous instances, consumers did not learn of the fee until they attempted to use their Kmart Gift Cards and found out that their cards had expired or held little or no remaining value. Some consumers have contacted respondents to request reimbursement for these fees, and respondents have provided some amount of reimbursement to consumers.

11. Since at least December 2005, respondents have stated on their Web site that Kmart Gift Cards “never expire.”
12. In the advertising and sale of Kmart Gift Cards, respondents have represented, expressly or by implication, that a consumer can redeem a Kmart Gift Card for goods or services of an equal value to the monetary amount placed on the card. Respondents have failed to disclose or failed to disclose adequately that, after 24 consecutive months of non-use, a \$2.10 fee is deducted, retroactively for each of the past 24 months, and again for each successive month of continued inactivity, from the value of the Kmart Gift Card. This fact would be material to consumers in their purchase or use of Kmart Gift Cards. The failure to disclose adequately this fact, in light of the representation made, was, and is, a deceptive practice.
13. In the advertising and sale of Kmart Gift Cards on the Kmart.com Web site, respondents have represented, expressly or by implication, that the Kmart Gift Card never expires. In truth and in fact, in numerous instances, after 24 consecutive months of non-use, a \$2.10 fee is deducted, retroactively for each of the past 24 months, from the value of the Kmart Gift Card, thereby causing any Kmart Gift Card valued at less than \$50.40 to expire. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.
14. The acts and practices of respondents 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 fourteenth day of August, 2007, has issued this complaint against respondents.

By the Commission, with the five Commissioners voting in the affirmative, but with Commissioner Harbour and Commissioner Leibowitz concurring in part and dissenting in part from the Decision and Order.

Donald S. Clark
Secretary

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