

**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**

**INPHONIC, INC.,  
a corporation.**

**DOCKET NO. C-**

**COMPLAINT**

The Federal Trade Commission, having reason to believe that InPhonic, Inc., a corporation (“InPhonic” or “respondent”), has 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 is a Delaware corporation with its principal office or place of business at 1010 Wisconsin Avenue, NW, Suite 600, Washington, DC 20007.
2. Respondent has advertised, offered for sale, sold, and distributed products and services to the public, primarily wireless telephone packages. Respondent markets these wireless telephone packages online through Web sites such as [www.wirefly.com](http://www.wirefly.com), [www.alwireless.com](http://www.alwireless.com), and numerous others. Each wireless telephone package includes a name-brand wireless device and a wireless service contract with a national or regional wireless carrier.
3. 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.

**Respondent’s Rebate Terms and Conditions**

4. In marketing its wireless telephone packages, respondent has advertised mail-in rebates, which, in many cases, have equaled the purchase price of the wireless device being purchased. (*See, e.g.*, Exhibit A). These rebates have been subject to numerous terms and conditions.
5. Respondent has offered two basic types of rebate programs, each of which has required that the consumer submit a rebate request within a specified time period and provide both proof-

of-purchase documentation and proof that the consumer has maintained uninterrupted wireless service for a designated period of time.

- A. Respondent's "customer loyalty" rebate has required the submission of a rebate form that respondent was to send to the consumer with the wireless device, a copy of the sales receipt, a copy of the UPC code from the wireless device's box, and a copy of the wireless service bill demonstrating that the consumer has maintained uninterrupted service for a designated period of time (typically 150 days after phone activation). Further, to be valid, the consumer's rebate request, with all required documentation, has had to be postmarked within a specified window of time, typically 180-210 days after phone activation. (*See, e.g.,* Exhibit B).
- B. Respondent's "customer appreciation rebate" has required the submission of a rebate form that respondent was to send to the consumer with the wireless device, a copy of the sales receipt, a copy of the UPC code from the wireless device's box, a copy of the "Guide to Wireless Service" that respondent was to send to the consumer with the wireless device, and copies of several wireless service bills. Further, to be valid, this rebate request, with all supporting documentation, has had to be postmarked within 120 days after phone activation. (*See, e.g.,* Exhibit C).

6. Respondent typically advertises available rebates on its Web sites. (*See, e.g.,* Exhibit A). Each listed rebate has a hyperlink. A consumer who clicks the hyperlink is taken to a page which describes some of the extensive terms and conditions of the advertised rebate. Consumers can purchase the package without viewing these terms and conditions. In addition, there is nothing on the link itself to indicate the nature or significance of the terms and conditions. As a result, numerous consumers were not aware of several unusual and restrictive terms and conditions making the rebate offer less attractive. For example, at the time of purchase, numerous consumers were not aware that: (a) they would not be able to submit a request for the rebate until as much as six months after purchase; (b) they would not receive the rebate until as much as nine or ten months after purchase; and (c) even if they continuously maintained their wireless service for the required period of time, they would be disqualified from receiving a rebate if they changed their wireless phone numbers after purchase.

7. Respondent has disseminated or has caused to be disseminated rebate forms for its "customer appreciation rebate," including but not necessarily limited to the attached Exhibit C. These rebate forms have contained the following statements:

"\$150 Mail-In Rebate

...

3. Include the following information with your rebate form:

...

- Copy of your 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> wireless bills showing customer name, mobile number, and bill/invoice date for this account showing all balances paid in full (bills must be dated within 120 days after purchase date).

....”

(Exhibit C, InPhonic rebate form (Offer BAK).

8. Numerous consumers seeking to redeem respondent’s “customer appreciation rebate” waited for a fourth wireless bill to show that their third wireless bill had been “paid in full.” As a result, these consumers were unable to submit their rebate requests to respondent within the 120-day time period specified in the offer. Respondent rejected such rebate requests as untimely.

### **Respondent’s Rebate Fulfillment Practices**

9. Respondent uses third-party companies (“fulfilment houses”) to receive and process rebate requests from consumers. Respondent has directed its fulfilment houses to apply strict criteria when determining the validity of a specific rebate request. For example, respondent has rejected requests in which rebate forms were not filled out completely, even if the missing information was provided elsewhere in the documentation provided by the consumer (*e.g.*, a wireless telephone number that appeared on the enclosed wireless bill) or was not necessary to determine whether those requesting the rebates were bona fide purchasers of respondent’s wireless packages who maintained uninterrupted wireless service for the required period of time (*e.g.*, an email address). Only about one-half of the consumers who have applied for rebates have received one, even though the vast majority of such consumers have been bona fide purchasers of respondent’s wireless packages and have maintained uninterrupted wireless service for the required period of time.

10. In numerous cases, respondent has rejected rebate requests because the requests lacked documentation that respondent failed to supply to consumers. For example, many consumers did not receive the required rebate redemption form when they received their wireless device, did not receive a box containing the required UPC code, and/or did not receive a required “Guide to Wireless Service” and, despite repeated attempts to contact respondent, were unable to obtain one or more of these items in time to send a valid rebate request.

11. In instances where a consumer’s rebate request has been rejected because of a curable deficiency, respondent has directed the fulfilment house to notify the consumer and suggest that the consumer re-submit the request during the required time frame and/or with the required documentation. Many of respondent’s rebate forms also have included the following statement:

“IF YOU ARE REQUIRED TO RESUBMIT MISSING, INCORRECT, OR ILLEGIBLE INFORMATION, YOUR CLAIM STATUS WILL BE UPDATED AT [RESPONDENT’S REBATE STATUS] WEBSITE.” (*See, e.g.,* Exhibit B).

12. In spite of these practices, in numerous cases, respondent has denied consumers a reasonable opportunity to re-submit deficient rebate requests. For example, many consumers have not been able to cure a rebate request because the fulfillment house has notified them about the deficiency too late. Specifically, consumers who had submitted requests in a timely manner, but whose request contained missing, illegible or incorrect information, have received notice of the deficiency after the last day on which a request would be accepted under the terms of the original rebate offer. In such cases, respondent has denied as untimely attempts by the consumer to resubmit the rebate request.

13. All of respondent’s rebate offers have represented that consumers would receive their rebate checks within twelve weeks of respondent’s receipt of the rebate request. In numerous cases, consumers experienced significant delays in receiving their promised rebates.

DECEPTIVE FAILURE TO DISCLOSE MATERIAL  
TERMS AND CONDITIONS OF REBATE OFFERS

14. Through the means described in Paragraphs 4 through 6, respondent has represented, expressly or by implication, that substantial mail-in rebates were available to purchasers of respondent’s wireless telephone packages. Respondent has failed to disclose or has failed to disclose adequately that:

- A. consumers would not be able to submit a request until at least three or six months after purchase;
- B. consumers would be required to submit wireless bills establishing three or six months of continuous wireless service in good standing;
- C. consumers would not receive their rebate check until approximately six or nine months after purchase;
- D. an email address would be required to be eligible for the rebate;
- E. consumers who changed their wireless phone numbers after purchase would be disqualified from receiving a rebate; and
- F. 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.

These facts would be material to consumers in their purchase or use of the product. The failure to disclose or to adequately disclose these facts, in light of the representation made, was, and is, a deceptive practice.

#### MISLEADING REBATE TERMS AND CONDITIONS – DECEPTIVE PRACTICES

15. Through the means described in Paragraph 7, respondent has represented, expressly or by implication, that consumers seeking to redeem respondent's "customer appreciation rebate" needed to establish that their first three months of wireless service had been paid in full by submitting four wireless bills.

16. In truth and in fact, consumers seeking to redeem respondent's "customer appreciation rebate" did not need to establish that their first three months of wireless service had been paid in full by submitting four wireless bills. 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 respondent rejected such rebate requests as untimely. Therefore, the representation set forth in Paragraph 15 was, and is, false or misleading.

17. Through the means described in Paragraph 11, respondent has represented, expressly or by implication, that consumers whose rebate requests contained missing, incorrect or illegible information would be given a reasonable opportunity to resubmit their request.

18. In truth and in fact, in numerous instances, consumers whose rebate requests contained missing, incorrect or illegible information were not given a reasonable opportunity to resubmit their request. Therefore, the representation set forth in Paragraph 17 was, and is, false or misleading.

#### UNFAIR ACT OR PRACTICE PREVENTING CONSUMERS FROM OBTAINING REBATES

19. As described in Paragraph 10, respondent has failed to provide rebates to numerous consumers who were bona fide purchasers of respondent's wireless telephone packages, maintained their wireless account in good standing for the appropriate period of time, and made all reasonable efforts to submit rebate applications that complied with the required terms and conditions. In numerous cases, respondent rejected rebate requests, or consumers were prevented from submitting valid requests, because respondent 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 respondent. Respondent's failure to provide rebates to such consumers has caused or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This practice was, and is, an unfair act or practice.

### LATE DELIVERY – UNFAIR PRACTICE

20. In connection with its rebate programs, respondent 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. After receiving rebate requests in conformance with these terms, respondent failed to deliver the rebates to consumers within the promised time period. Respondent extended the time period in which it would deliver the rebates to consumers without consumers agreeing to this extension of time. Respondent's failure to deliver the rebate checks to consumers within the originally-promised time period has caused or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This practice was, and is, an unfair act or practice.

21. 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 this     day of     , 2007, has issued this complaint against respondent.

By the Commission.

Donald S. Clark  
Secretary