

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

TIM R. WOFFORD,
individually and as an officer
of OKIE CORPORATION.

FILE NO. 012 3191

AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Tim R. Wofford, individually and as an officer of OKie Corporation (“proposed respondent”). Proposed respondent 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 Tim R. Wofford, individually and as an officer of OKie Corporation and counsel for the Federal Trade Commission that:

1. Proposed respondent Tim R. Wofford is an officer of OKie Corporation (“OKie”), a Delaware corporation with its principal office or place of business at 283A Centre Street, Holbrook, MA 02343. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of OKie. He resides at 68 Donna Road, Needham, MA 02494-1516.
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 he 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. He understands that he 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 Tim R. Wofford, individually and as an officer of OKie Corporation, his agents, representatives, and employees.
2. "Rebate" shall mean cash, credit towards future purchases, merchandise, services, or any other consideration offered by respondent to consumers who purchase products or services, and which is provided subsequent to the purchase.

3. “Rebate coupon(s) or form(s)” shall mean any means by which a consumer submits a rebate request.
4. “Mail Order Rule” shall mean the Federal Trade Commission’s Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended.
5. “Clearly and conspicuously” 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 visual portions of the advertisement. Provided, however, that in any advertisement presented solely through visual 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 visual 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.
 - 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.
 - 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.

6. In the case of advertisements disseminated by means of an interactive electronic medium such as software, the Internet or online services:
 - A. “in close proximity” shall mean on the same Web page, online service page, or other electronic page, and proximate to the triggering representation, and shall not include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials or other means;
 - B. a disclosure made “through the use of a hyperlink” shall mean a hyperlink that is itself clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the

nature and relevance of the information it leads to, is on the same Web page, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel.

7. “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 in or affecting commerce, shall not:

- A. make any representation about any rebate offer, unless respondent discloses on the rebate coupon or form, clearly and conspicuously, all terms, conditions, or other limitations of the rebate offer.
- B. require a consumer to disclose a fax number or email address on a rebate coupon or form of any rebate offer, unless respondent discloses, clearly and conspicuously, in any advertisement that mentions the rebate offer that the rebate offer requires consumers to disclose a fax number and/or email address on their rebate coupons or forms.
- C. misrepresent, in any manner, expressly or by implication, the time in which any rebate in the form of cash or credit towards future purchases will be mailed, or otherwise provided to purchasers;
- D. fail to provide any rebate in the form of cash within the time specified, or, if no time is specified, within thirty (30) days;
- E. fail to provide any rebate in the form of credit towards future purchases within the time specified, or, if no time is specified, within thirty (30) days;
- F. violate any provision of the Mail Order Rule in connection with any rebate in the form of merchandise, including failing to provide the rebate within the time specified, or, if no time is specified, within thirty (30) days, unless respondent offers to the purchaser the option of either:
 - 1. consenting to the delay; or

2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered; or
- G. fail to provide any rebate in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time specified, or, if no time is specified, within thirty (30) days, unless respondent offers to the purchaser the option of either:
1. consenting to the delay; or
 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

II.

IT IS FURTHER ORDERED that respondent Tim R. Wofford 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. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in his possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent Tim R. Wofford, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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, Washington, D.C. 20580.

IV.

IT IS FURTHER ORDERED that respondent Tim R. Wofford 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 he has complied with this order.

V.

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 _____, 2001

TIM R. WOFFORD, individually and as an
officer of OKie Corporation

KERRY O'BRIEN
LINDA K. BADGER
Counsel for the Federal Trade Commission

APPROVED:

JEFFREY KLURFELD
Regional Director
Western Region

J. HOWARD BEALES, III
Director
Bureau of Consumer Protection