

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS:

**Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary**

In the Matter of

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

DOCKET NO. C-4061

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Western Region proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to § 2.34 of its Rules, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. 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. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

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 on October 8, 2022, or (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.

By the Commission.

Donald S. Clark
Secretary

ISSUED: October 8, 2002