

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright
Terrell McSweeney

In the Matter of

DEUTSCH LA, INC.,
a corporation.

FILE NO. 122-3252

AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of Deutsch LA, Inc., a corporation (“proposed respondent” or “Deutsch LA”). Proposed respondent, having been represented by counsel, 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 Deutsch LA, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent Deutsch LA, Inc., is a California corporation with its principal office or place of business at 5454 Beethoven Street, Los Angeles, CA 90066.
2. Proposed respondent neither admits nor denies any of the allegations in the draft complaint, except as specifically stated in this order. Only for purposes of this action, proposed respondent admits the facts necessary to establish jurisdiction.
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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1)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 it 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.

6. Proposed respondent has read the draft complaint and consent order. It understands that it 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 Deutsch LA, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
2. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. "Clearly and prominently" shall mean as follows:
 - a. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
 - b. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - c. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an

ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the communication. Provided, however, that, for communications disseminated through programming over which respondent does not have editorial control (*e.g.*, an endorser's appearance on a news program or talk show), the required disclosures may be made in a form consistent with subparagraph (b) of this definition;

- d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and
 - e. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
4. "Handheld Game Console Product" means any handheld portable electronic device designed for and primarily used for playing video games that has its own screen, speakers and controls in one unit, including the PlayStation Vita ("PS Vita") and the PlayStation Portable ("PSP").
5. "Home Game Console Product" means any electronic device designed for and primarily used for playing video games on a separate television screen, including the PlayStation 3 ("PS3") and the PlayStation 4 ("PS4").
6. "Endorsement" means as defined in the Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. §255.0.
7. "Endorser" means an individual or organization that provides an Endorsement.
8. "Material connection" means any relationship that materially affects the weight or credibility of any endorsement and that would not be reasonably expected by consumers.
9. "Video Game Product" means any electronic game that is designed for and primarily used for playing on a Handheld Game Console Product or a Home Game Console Product.
10. The term "including" in this order means "without limitation."

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any material

gaming feature or capability of such product when used as a standalone device to play video games.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that such feature or capability was misrepresented.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of the Handheld Game Console Product or Home Game Console Product to interact with, or connect to, any other Handheld Game Console Product during gaming, unless at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that such capability was not substantiated by competent and reliable evidence.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of any Handheld Game Console Product to interact with, or connect with, any Home Game Console Product during gaming, unless it discloses, clearly and prominently, and in close proximity to the representation, that consumers must purchase two versions of the same video game, one for the Handheld Game Console Product and one for the Home Game Console Product, if such is the case.

Provided, however, that it shall be a defense hereunder that the respondent neither knew nor had reason to know that consumers must purchase two versions of the same video game to use such capability.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, Home Game Console Product, or Video Game Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that an endorser of such product is an independent user or ordinary consumer of the product.

V.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the advertising, labeling, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, Home Game Console Product, or Video Game Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about any endorser of such product unless it discloses, clearly and prominently, a material connection, when one exists, between such endorser and the respondent or any other individual or entity manufacturing, advertising, labeling, promoting, offering for sale, selling, or distributing such product.

VI.

IT IS FURTHER ORDERED that respondent shall, within seven (7) days of the date of service of this order, take all reasonable steps to remove any product review or endorsement, which is under the control of respondent Deutsch LA, Inc., currently viewable by the public that does not comply with Parts IV and V of this order.

VII.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, upon reasonable notice and 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 its 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.

VIII.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall deliver a copy of this order to all current and, for the next five (5) years, all future account directors and creative directors having direct and supervisory or managerial responsibilities with respect to the subject matter of this order (“Personnel”), and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent and its successors and assigns shall deliver this order to current Personnel within thirty (30) days after the date of service of this order, and to future Personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Deutsch LA, Inc., FTC File Number 122-3252. Provided, however, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

X.

IT IS FURTHER ORDERED that respondent Deutsch LA, Inc., and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

XI.

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.

DEUTSCH LA, INC.

Date: _____

By: _____

MICHAEL SHELDON
Chief Executive Officer

Date: _____

RONALD URBACH, ESQ.
Davis & Gilbert, LLP
Attorney for respondent

Date: _____

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APPROVED:

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