

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Gateway 2000, Inc. ("Gateway"), a manufacturer and direct marketer of personal computers.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondent violated Section 5 of the FTC Act by deceptively advertising its provision of on-site warranty service and its refund policy, and by its use of deceptive language in its written warranties. Additionally, the complaint alleges that Gateway has violated the Magnuson-Moss Warranty Act ("Warranty Act")⁽¹⁾ and two Rules promulgated thereunder: the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule");⁽²⁾ and the Rule concerning the Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule").⁽³⁾ Under Section 110(b) of the Warranty Act, 15 U.S.C. § 2310(b), violations of the Act or its Rules are also violations of Section 5 of the FTC Act.

The draft Complaint charges that Gateway violated section 5 of the FTC Act in three ways. First, that the respondent falsely advertised its policy of "money-back" guarantees by deducting a shipping charge from a full refund to the consumer. Second, that the respondent falsely advertised that consumers would be provided with free "on-site service" upon request. Third, the draft Complaint charges the respondent with falsely representing, in its written warranties, the remedies available to a consumer seeking incidental or consequential damages.

The draft Complaint also alleges: that the respondent violated the Pre-Sale Rule by failing to make the text of the written warranty readily available to prospective buyers prior to sale through one or more of the means specified by the Rule; that Gateway failed to comply with requirements of the Disclosure Rule that certain language be included in written warranties pertaining to the exclusion or limitation of consequential or incidental damages, and a notice that the rights of the purchaser with respect to the warranty may vary from state to state such that the exclusion or limitation may not apply to a particular consumer; and, that Gateway's warranties disclaimed all implied warranties and, therefore, failed to comply with the Warranty Act's prohibition against the disclaimer of implied warranties, 15 U.S.C. § 2308.

Gateway has agreed to a one-time payment to the U.S. Treasury of \$289,429.05 to settle allegations that it falsely and deceptively advertised that a consumer's shipping charges would be refunded if they exercised their 30-day money-back guarantee option. The draft Order prohibits the respondent from failing to make a full refund of the purchase price unless it has disclosed, in close proximity to the guarantee, that deductions will be made. The draft Order prohibits the

respondent from misrepresenting its provision of "on-site service." The draft Order prohibits the respondent from failing to make the text of the written warranty readily available to prospective buyers prior to sale through one or more of the means specified in 16 C.F.R. § 702.3(c). The draft Order prohibits the respondent from failing to comply with the provisions of the Disclosure Rule, 16 C.F.R. Part 701.3 and from failing to comply with the provisions of U.S.C. § 2308.

The proposed Consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondent from engaging in similar acts and practices in the future. The remainder of the proposed order consists of a five year record keeping provision and other standard compliance provisions.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

1. 15 U.S.C. § 2301 *et seq.*

2. 16 C.F.R. § 701.

3. 16 C.F.R. § 702.