

Decision and Order

EXHIBIT A

[COMPANY LETTERHEAD]

Dear [Recipient]:

EMI announces several important changes in policy. All of these changes will be reflected in the new Policy Manual.

EMI has dropped its Minimum Advertised Price (AMAP®) policy effective ____, 2000. Cooperative advertising and other promotional funds will not be conditioned upon the price at which EMI product is advertised or promoted. As many of you know, the Federal Trade Commission has conducted an investigation into EMI's MAP policy. To end the investigation expeditiously and to avoid disruption to the conduct of its business, EMI has voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement relating to MAP and other related matters.

EMI's customers can advertise and promote our products at any price they choose. EMI will not withhold cooperative advertising or other promotional funds on the basis of the price at which EMI product is advertised in the media or promoted in your stores. EMI may announce suggested retail prices, but retailers remain free to sell and advertise EMI product at any price they choose.

Statement of the Commission

STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND
COMMISSIONERS SHEILA F. ANTHONY, MOZELLE W.
THOMPSON, ORSON SWINDLE, AND THOMAS B. LEARY

The Commission has unanimously found reason to believe that the arrangements entered into by the five largest distributors of prerecorded music violate the antitrust laws in two respects. First, when considered together, the arrangements constitute practices that facilitate horizontal collusion among the distributors, in violation of Section 5 of the Federal Trade Commission Act. Second, when viewed individually, each distributor=s arrangement constitutes an unreasonable vertical restraint of trade under the rule of reason. A discussion of these violations is spelled out in our Analysis to Aid Public Comment. *See Attached.*

The Commission considered carefully whether the anticompetitive vertical restraints should be evaluated under a *per se* rule or a rule of reason. In the past, the Commission has employed the rule of reason to examine cooperative advertising programs that restrict reimbursement for the advertising of discounts, because such programs may be precompetitive or competitively neutral. *Statement of Policy Regarding Price Restrictions in Cooperative Advertising Programs B Rescission*, 6 Trade Reg. Rep. (CCH) & 39,057. The cooperative advertising programs that were the subject of previous Commission actions involved only advertising paid for in whole or in part by the manufacturer, but did not restrain the dealer from selling at a discount or from advertising discounts when the dealer itself paid for the advertisement. *See, e.g., The Advertising Checking Bureau, Inc.*, 109 F.T.C. 146, 147 (1987) (The restraints . . . do not prohibit retailers from selling at discount prices or advertising discounts or sale prices with their own funds@).

The Minimum Advertised Pricing (AMAP@) policies of the five distributors in this matter go well beyond the cooperative

Statement of the Commission

advertising programs with which the Commission has previously dealt: the distributors' MAP policies prohibited retailers from advertising discounts in all advertising, including advertising paid for entirely by the retailer; the MAP policies applied to in-store advertising, excepting only the smallest price labels affixed to the product; and a single violation of a distributor's MAP policy carried severe financial penalties, resulting in the loss of all MAP funds for all of the retailer's stores for 60 to 90 days (*see* Paragraph 7 of each Complaint).

Retailers were free to sell at any price, so long as they did not advertise a discounted price. In fact, there was evidence that some retailers on rare occasions did sell product at a discount without advertising the discounted price, instead advertising simply that the product was available at a guaranteed low price.[@] We are therefore reluctant to declare that compliance with the MAP policies by retailers constituted *per se* unlawful minimum resale price maintenance, because we cannot say that there is sufficient evidence of an agreement by retailers to charge a minimum price. As stated by a majority in *In the Matter of American Cyanamid Co.*, Both the courts and the Commission have judged cooperative advertising cases under the rule of reason, as long as the arrangements do not limit the dealer's right: (1) to discount below the advertised price, and (2) to advertise at any price when the dealer itself pays for the advertisement.[@] 123 F.T.C. 1257, 1265 (1997) (Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger and Christine A. Varney).¹

In *Business Electronics Corp. v. Sharp Electronics Corp.*, 485 U.S. 717, 735-36 (1988), the Supreme Court held that a vertical restraint is not illegal *per se* unless it includes some agreement on

¹ In *American Cyanamid*, the manufacturer conditioned financial payments on its dealers' charging a specified minimum price, which the Commission found to be *per se* unlawful minimum resale price maintenance. By contrast, financial payments under the distributors' MAP policies here were conditioned on the price advertised, not on the price charged.

Statement of the Commission

price or price levels.@ In our view, *Sharp* requires something more than a showing that an agreement has some influence on price. Restrictions on advertisements that include discounted prices in advertisements funded in whole or in part by the manufacturer are not *per se* illegal, notwithstanding the fact that they are likely to have an influence on resale prices. Indeed, the pervasive practice of publishing suggested retail prices is also likely to have some influence on actual prices, but it is well established that this practice is not *per se* illegal. *See, e.g., Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984).

Nonetheless, we conclude that the distributors= MAP policies are unlawful under a rule of reason analysis. The five distributors together account for over 85 percent of the market (*see* Paragraph 2 of each Complaint), and each has market power in that no music retailer can realistically choose not to carry the music of any of the five major distributors. The MAP policies were adopted by each of the distributors for the purpose of stabilizing retail prices (*see* Paragraph 10 of each Complaint). The MAP policies achieved their purpose and effectively stabilized retail prices with consequential effects on wholesale prices, ending the price competition that previously existed in the retail marketplace and the resulting pressure on the distributors= margins (*id.*). Compliance with the MAP policies B which was secured through significant financial incentives B effectively eliminated the retailers= ability to communicate discounts to consumers (*see* Paragraph 8 of each Complaint). Even absent an actual agreement to refrain from discounting, this inability to effectively communicate discounts to consumers meant that retailers had little incentive to actually sell product at a discount.

In the future, the Commission will view with great skepticism cooperative advertising programs that effectively eliminate the ability of dealers to sell product at a discount. The Commission

Statement of the Commission

will, of course, consider *per se* unlawful² any arrangement between a manufacturer and its dealers that includes an explicit or implied agreement on minimum price or price levels,³ and it will henceforth consider unlawful arrangements that have the same practical effect of such an agreement without a detailed market analysis, even if adopted by a manufacturer that lacks substantial market power.

² Commissioners Swindle and Leary have previously stated that the Supreme Court should reassess the applicability of the *per se* rule to the practice when the appropriate case arises. *Nine West Group Inc.*, Dkt. No. C-3937 (Statement of Commissioners Orson Swindle and Thomas B. Leary). However, they agree that, so long as this *per se* rule is the law, summary treatment is appropriate for resale price agreements and other agreements with the same practical effect.

³ In addition, the Commission will continue to consider *per se* unlawful any cooperative advertising program that is part of a resale price maintenance scheme. *Cf. The Magnavox Co.*, 113 F.T.C. 255, 262 (1990) (AOf course, any cooperative advertising program implemented by Magnavox as part of a resale price maintenance scheme would be *per se* unlawful . . . @).

*Analysis to Aid Public Comment***Analysis to Aid Public Comment on the Proposed Consent Order**

The Federal Trade Commission ("Commission") has accepted agreements containing proposed consent orders from the corporate parents of the five largest distributors of prerecorded music in the United States. The five distributors, Sony Music Distribution ("Sony"), Universal Music & Video Distribution ("UNI"), BMG Distribution ("BMG"), Warner-Elektra-Atlantic Corporation ("WEA") and EMI Music Distribution ("EMI"), account for approximately 85% of the industry's \$13.7 billion in domestic sales. The agreements would settle charges by the Commission that these five companies violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition in the domestic market for prerecorded music.

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

There are five separate complaints and proposed consent orders in this matter, one for each of the distributors, which are virtually identical with the exception of minor variations related to the corporate structure of each respondent.

Analysis to Aid Public Comment

Analysis

The complaints allege that all five distributors have engaged in acts and practices that have unreasonably restrained competition in the market for prerecorded music in the United States through their adoption, implementation and enforcement of Minimum Advertised Price ("MAP") provisions of their Cooperative Advertising Programs.

These five companies, which collectively dominate this market, adopted significantly stricter MAP programs between late 1995 and 1996. Under the new MAP provisions, retailers seeking any cooperative advertising funds were required to observe the distributors' minimum advertised prices in all media advertisements, even in advertisements funded solely by the retailers. Retailers seeking any cooperative funds were also required to adhere to the distributors' minimum advertised prices on all in-store signs and displays, regardless of whether the distributor contributed to their cost.

Failure to adhere to the respondents' MAP provisions for any particular music title would subject the retailer to a suspension of all cooperative advertising funding offered by the distributor for an extended period, typically 60 to 90 days.¹ The severity of these penalties ensured that even the most aggressive retail competitors would stop advertising prices below MAP. The complaints further allege that by defining advertising broadly enough to include all in-store displays and signs, the MAP policies effectively precluded many retailers from communicating prices below MAP to their customers.

The MAP provisions were implemented with the anticompetitive intent to limit retail price competition and to

¹ BMG's policy differed slightly. Under the BMG MAP provisions, the suspension of all cooperative advertising funding required a finding of two MAP violations. However, BMG MAP provisions also established a suspension of up to a year for repeated violations.

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stabilize the retail prices in this industry. Prior to the adoption of these policies, new retail entrants, especially consumer electronic chains, had sparked a retail "price war" that had resulted in significantly lower compact discs prices to consumers and lower margins for retailers. Some retailers, who could not compete with the newcomers, asked the distributors for discounts or for more stringent MAP provisions to take pressure off their margins.

The complaints allege that the distributors were concerned that declining retail prices could cause a reduction in wholesale prices. Through these stricter MAP programs, the distributors hoped to stop retail price competition, take pressure off their own margins, and eventually increase their own prices. The distributors' actions were effective. Retail prices were stabilized by these MAP programs. Thereafter, each distributor raised its wholesale prices.

While some vertical restraints can benefit consumers (known as "efficiencies") by enhancing interbrand competition and expanding market output, plausible efficiency justifications are absent in this case. Beneficial vertical restraints encourage retailers to provide better services to consumers than would have been provided in the absence of the restraint. However, in this case, the distributors' MAP policies provided no benefits to consumers. In particular, the new retailers that charged lower prices to consumers provided services that were as good as, and in some cases, superior to the services provided by the higher priced retailers they were moving to replace. These policies were plainly not motivated by "free-riding" concerns.

The substantial anticompetitive effects of these programs, balanced against the absence of plausible efficiency rationales for them, give us reason to believe that these programs constitute unreasonable vertical restraints in violation of Section 5 of the FTC Act under a rule of reason analysis. Although the Commission has concluded that compliance by retailers with these programs did not constitute per se unlawful minimum resale

Analysis to Aid Public Comment

price maintenance agreements, it should be noted that the MAP provisions implemented here go well beyond typical cooperative advertising programs, where a manufacturer places restraints on the prices its dealers may advertise in advertisements funded in whole or in part by the manufacturer. Such traditional cooperative advertising programs are judged under the rule of reason. *American Cyanamid*, 123 F.T.C. 1257, 1265 (1997); *U.S. Pioneer Electronics Corp.*, 115 F.T.C. 446, 453 (1992); *The Advertising Checking Bureau, Inc.*, 109 F.T.C. 146 (1987).

The market structure in which the distributors' MAP provisions have operated also gives us reason to believe that these programs violate Section 5 of the FTC Act as practices which materially facilitate interdependent conduct. The MAP programs were implemented with an anticompetitive intent and they had significant anticompetitive effects. In addition, there was no plausible business justification for these programs. *E.I. du Pont de Nemours & Co. v. FTC*, 729 F.2d 128 (2d Cir. 1984).

The wholesale market for prerecorded music is characterized by high entry barriers which limit the likelihood of effective new entry. In this industry, the respondents can easily monitor the pricing and policies of their competition.

The history of MAP policies in this industry also indicates a propensity for interdependent behavior among the distributors. All five distributors adopted MAP policies in 1992 and 1993 that generally required adherence to minimum advertised prices in advertisements paid for by the distributors. In 1995 and 1996, all five distributors expanded the restrictions in their MAP programs to require adherence to minimum advertised prices in advertisements regardless of the funding source. In one case, the new MAP provisions were announced four months prior to their effective date. During this four month hiatus, two other distributors adopted similar provisions. By the end of 1996, all five distributors had adopted MAP provisions that were virtually identical. Shortly thereafter, several distributors embarked on high profile enforcement actions against major discounters who

Analysis to Aid Public Comment

were discounting prices; these enforcement actions were widely publicized by the trade press.

The Proposed Consent Order

There are five separate consent orders, one for each company.

Part I of the proposed orders establishes definitions. These definitions make clear that the provisions of the order apply to the directors, officers, employees, agents and representatives of the five distributors. This section also makes clear that its provisions apply to cooperative funding efforts regardless of whether the retailer sells prerecorded music in traditional retail stores or over the Internet.

Part II of the orders requires all of the distributors to discontinue their MAP programs in their entirety for a period of seven years. The Commission believes this relief is necessary because some of the challenged MAP programs have been in place for more than four years. Quite simply, it will take several years without the MAP restrictions to restore retail price competition.

Part III of the orders contains several prohibitions to ensure that the distributors are unable to maintain the anticompetitive status quo in some other way. Subsection A prohibits the companies from conditioning the availability of any advertising funds on a retailer's actual selling price. Subsection B prohibits the distributors from restricting the availability of any advertising funds on the basis of an advertisement funded solely by its customers that do not adhere to the minimum advertised price. Subsection C prohibits the distributors from making payments that exceed the retailers' promotional costs to ensure compliance with any MAP program. Subsection D prohibits the distributors from controlling their customers' resale prices. Subsection E prohibits, for five years, the distributors from exercising their

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Colgate rights to unilaterally terminate dealers for failure to comply with any minimum advertised or resale price.

For EMI, BMG, and UNI, Parts IV, V, and VI are various notice provisions requiring the companies to notify their customers and senior management concerning the terms of this order. Part VII establishes that the distributors shall make annual compliance reports concerning their compliance with the terms of this order. Such reports may also be required by the Commission at any time. Part VIII establishes that the order shall terminate in twenty (20) years.

Part IV of the WMG and Sony orders specifically incorporates an exception to the prohibition against RPM that permits distributors to require their dealers to pass-through discounts. The notice and compliance requirements, and term of the order, are the same as for the other three respondents and are found at Parts V, VI, VII and VIII of the orders for WMG and Sony.

Complaint

IN THE MATTER OF

VALUE AMERICA, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3976; File No. 9923206**Complaint, September 5, 2000--Decision, September 5, 2000*

This consent order addresses Value America's advertising claims regarding the sale of various computer systems based upon a \$400 rebate that required consumers to enter into a three-year contract for Internet service. The complaint alleges that Value America advertised computer systems citing a total cost amount that included undisclosed requirements. The complaint further alleges that the Respondent falsely claimed that a monitor would be included in some systems at no additional cost. Respondent also failed to ship some or all of the merchandise ordered in a timely manner and failed to offer buyers the option to consent to the delay in shipping or to cancel the order and receive a prompt refund. The order prohibits Value America from misrepresenting the price or cost to consumers of computers or computer related equipment without disclosing any condition clearly and conspicuously along with the price of the additional product or service that must be purchased. The order also requires the Respondent to disclose, clearly and conspicuously, and in close proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts. Additionally, the order prohibits Respondent from making any representation about the cost of Internet access services without disclosing the following material facts: (1) if consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service; (2) the amounts of such costs must be disclosed; (3) if consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service; (4) the amount of time required for purchasers to receive any rebate. These disclosures can be made through hyperlinks if the hyperlink clearly indicated the nature and importance of the information included.

Participants

For the Commission: *Beverly J. Thomas, Michael Dershowitz, Sydney Knight, Joel Winston, C. Lee Peeler, and BE.*

For the Respondents: *Alfred J.T. Byrne, LeClair Ryan, PC.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that Value America, Inc., a corporation ("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 Value America, Inc. is a Virginia corporation with its principal office or place of business at 2300 Commonwealth Drive, Charlottesville, Virginia 22901.
2. Respondent has advertised, offered for sale, sold, and distributed products to the public, including books, sporting goods, housewares, appliances, personal electronic devices, and personal computers. Value America sells these products through its Internet Web sites, [<www.va.com>](http://www.va.com) and [<www.valueamerica.com>](http://www.valueamerica.com), and through toll-free telephone numbers.
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.
4. The term AMail Order Rule@ means the Federal Trade Commission=s Trade Regulation Rule entitled AMail or Telephone Order Merchandise,@ 16 C.F.R. Part 435, and as it may hereafter be amended. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. S 57a(d)(3), a violation of the Mail Order Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act.
5. Respondent has disseminated or has caused to be disseminated advertisements for numerous computer systems, including but not limited to, a Toshiba Satellite 2100 CDS laptop, an HP Pavilion 4535 Multimedia PC, a Proteva computer, an IBM Aptiva E572

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Micro Tower, and an emachines etower 366C. Advertisements for these computers appear in various media and include but are not necessarily limited to the attached Exhibits A through E.

The advertisements contain the following statements:

Exhibit A: Magazine ad

Get Out of Here

Hit the Road with Our Notebooks and Palm PCs

[Depiction:Toshiba laptop] **Let >Em Think You Paid Top Dollar**

The Toshiba Satellite 2100CDS looks and performs like a high-priced notebook, but actually costs a lot less. Built for speed, this Satellite boasts a 400 MHz AMD K67-2 processor with [component specifications for laptop].

Toshiba Satellite
\$1299, less optional Prodigy
\$400 Internet rebate!*

Pay as little as \$899

[A fine print disclosure, in approximately 5-point type, at the bottom of this magazine ad states:]

*Prodigy Offer Terms & Conditions Offer limited to new Prodigy Internet members only and valid only in the United States. Mail-in rebate valid only on qualifying Toshiba notebook computers purchased from authorized Toshiba retailers or direct mail resellers between August 8, 1999, and December 31, 1999, and accompanied by enrollment in a fixed-term ARebate:Toshiba/Prodigy Internet@ membership on Prodigy Internet between

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August 8, 1999, and January 31, 2000, using only the CD sent to you per this request. Enrollment in the Prodigy Internet service must be completed with an automatic payment plan on a valid major credit card. Payment of \$19.95 per month is required for the length of your commitment. Mail-in rebate offer is subject to all Terms & Conditions on the reverse side of the mail-in rebate form which you will receive with your CD. Rebate checks will be processed within 8 weeks after Prodigy has received payment for your second monthly Prodigy membership fee, received your properly completed rebate form with a legible copy of your store receipt, and established your creditworthiness. If you cancel your membership prior to the end of your fixed term enrollment commitment, your credit card will be charged a cancellation fee equal to the amount of your Prodigy Internet mail-in rebate plus a \$50 service fee as described in the Terms and Conditions on the mail-in rebate form. Rebate offered by Prodigy and not Toshiba.

Exhibit B: Radio adAnnouncer:

ValueAmerica.com - changing the way America buys. This week at ValueAmerica.com, we have the NEW Hewlett-Packard Pavilion 4535 Multi-media PC - with the Intel CELERON Processor - 400 megahertz It comes with a CD-ROM, Windows 98, and a 56K Modem. Imagine the quality of H-P at a price of less than \$500 - in a package that also includes stereo speakers, a color monitor and a color printer. At Value America, this H-P Pavilion 4535 Multi-media PC, with the Intel CELERON processor, is ONLY 449! - after internet rebate. You heard right! 449 and if you call right now, we'll throw in FREE DELIVERY! To take advantage of this week=s special, the H-P Pavilion 4535 for only 499 (sic), with FREE Shipping, call now at 888-XXX-XXXX. 888-XXX-XXXX or go online at ValueAmerica.com.

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Exhibit C: Infomercial

Audio Portion:

The following is a paid program brought to you by Value America, the Internet and now television=s leading source for brand name products at unbeatable prices.

Stay tuned for the following products:

* * * *

Stay tuned for Value America Showcase.

* * * *

So how much do you think you should pay for a system like this? ... What would you do if I told you \$1299 after rebates? . . . [A]nd when you get hooked up with the Microsoft Internet plan they=re going to give you a \$400 rebate. We=re also going to give you a printer factory rebate of \$50 and a scanner rebate of \$50 for a total of \$500 in rebates. . . . [T]hat brings the total to

Simultaneously Displayed on TV Screen:

[Lists computer system and bundled components]

* * * *

A\$3000 [crossed out], \$2000 [crossed out] -- **\$1299** after rebates@

AValue America Discount
Price: \$1799 minus
-Microsoft Rebate: \$400 (with MSN Activation)
-Printer Rebate: \$50
-Scanner Rebate: \$50
Total Rebates: \$500"

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\$1299 for everything we=ve
talked about.

Complaint

<p>And, if you call right now, we're going to throw in free shipping and handling. . . .</p> <p style="text-align: center;">* * * *</p> <p>We're talking about Proteva, let's hear a little bit about Proteva. They're a huge company based in Wisconsin . . .</p> <p style="text-align: center;">* * * *</p>	<p>A. . . . one-year Proteva warranty . . .@</p> <p>A\$1299 after rebates@ [in lower left corner of the screen; remains in lower left corner of the screen for much of the remaining minutes of the program.]</p> <p style="text-align: center;">* * * *</p> <p>Proteva, 10 year old computer manufacturer . . .</p> <p style="text-align: center;">* * * *</p>
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<p>[No audio]</p>	<p>[The following is the full text of the terms and conditions associated with the \$400 rebate offer. This text is scrolled vertically down the television screen, over a 4 to 5 second time period. There is no audio or visual indication that this text applies to the rebate offer and, because it scrolls so quickly, it cannot be read or understood by viewers.]</p> <p>Terms and Conditions.</p> <p>We know that you will like our service, and as an inducement to give MSN Plus Internet Access a full and fair trial, we are prepared to lend you the amount of the rebate selected above (up to \$400) to help you get online. If you continue as a paying member of the MSN Plus service for the full period selected by you above, then you do not have to repay any part of the</p>
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	rebate amount. But if your MSN account is cancelled or terminated at any time before the end of the required period, you agree to pay back the full amount of the rebate. In either case you pay no interest.
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(No audio)

Within six to eight weeks of our acceptance of your application, which is subject to credit approval, the Microsoft Network, LLS, ("MSN") will advance to you the amount of (*sic*) designated above provided you have signed up for the MSN Plus Internet Access service. The rebate amount will either be credited to your credit card account as designated above or will be remitted by check to the address designated above. Accordingly to qualify for this program (1) you must pay for the MSN Plus Internet Access service each month in advance (\$21.95); (2) you must purchase a Proteva PC no later than December 31, 1999; (3) this form must be completed fully mailed and postmarked within 30

(No audio)

days of purchase date; (4) you must sign below to show that you agree to the items and conditions described in this application and the MSN member agreement which was presented to you online upon signup (and checked "I accepted") for line service; (5) you must attach this application, the original receipt, evidencing your purchase, with the purchase price circled, and (6) you must be at least 18 years old. You may receive only one rebate for each purchase. Accordingly you may receive only one rebate

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for each new MSN Internet access account.

You are not obligated to continue as a MSN Plus Internet Access member for any particular length of time. HOWEVER, IF FOR ANY REASON WHATSOEVER YOU DO NOT CONTINUE FOR THE PERIOD OF TIME SPECIFIED ABOVE FOR THE REBATE YOU HAVE ELECTED TO RECEIVE, YOU AGREE THAT YOU WILL REPAY MSN THE AMOUNT [OF THE] REBATE ("Reimbursement amount") IMMEDIATELY UPON CANCELLATION OR TERMINATION OF YOUR MSN PLUS INTERNET ACCESS ACCOUNT. If you do not render payment in cash for the full reimbursement amount at the time that your MSN Plus Internet Access account is cancelled or terminated, and if your membership ends before the time designated for your rebate amount, you agree that MSN is authorized to change the reimbursement amount to your credit or debit card account. You acknowledge and agree that MSN may terminate your MSN Plus Internet Access account if you violate the MSN membership agreement. In such event you will be required to repay the reimbursement amount as described herein. You may designate your preferred credit card account above, but you understand and agree that MSN may charge any of your debit or credit card accounts and you authorize the issuer of any card account to which MSN charges the amount of the rebate to charge that amount to your account balance.

[End of
advertisement]

You agree that this agreement will be governed by the laws of the state of Washington and you consent to the exclusive

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jurisdiction and venue of the courts in King County Washington in all disputes arising out of or relating to this agreement.

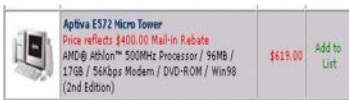
You acknowledge and agree that your purchase is from the applicable retailer and not from MSN LLC, MSN or Microsoft Corporation.

This MSN rebate program is available only to residents of the 50 United States and the District of Columbia that purchase a Proteva PC.

Exhibit D: Web page advertisementsExhibit D.1

Hyperlink to
D.2□

[Depiction is a
hyperlink
which, after
two more
hyperlinks,
leads to
Exhibit D.2.]



"Hyperlink to
shopping cart
list

(Exhibit D.1 is the initial Web page for the Home Computer section of Value America=s online store. Consumers can click on the shopping cart hyperlink to initiate the online purchase process, without viewing Exhibits D.2 or D.3.)

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Exhibit D.2

Your Price: \$1,019.00 [Hyperlink to
Price After Rebate: shopping cart
\$619.00 list]

**ASpecifications@**

[List of twenty technical specifications about the advertised model, followed by:]

\$ Note: Monitor sold separately.

[AProduct Rebates@ tab is a hyperlink to Exhibit D.3]

(Exhibit D.2: ASpecifications@ Web page accessed through a minimum of two hyperlinks, whose labels do not refer or relate to the monitor. The quoted statement ANote: Monitor sold separately.@ appears at the bottom of the Web page after a lengthy list of technical product specifications. Consumers could purchase the advertised computer model from respondent online without viewing this page.)

Exhibit D.3**AProduct Rebates@**

A\$400 Mail-In Offer from Compuserve
3 year Internet Service contract and major


"[Undisclosed hyperlink behind the phrase A\$400 Mail-In Offer from

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credit card required. Valid with a purchase of an IBM Aptiva PC and monitor from July 18, 1999 to January 31, 2000. See rebate form for complete details.@	Compuserve,@ which leads to the home page of a third party Web site.]
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(Exhibit D.3: AProduct Rebates@ Web page accessed from Exhibit D.1 through a minimum of two hyperlinks, the first of which is not labeled as referring or relating to information about the advertised rebate offer. This Web page discloses that the advertised rebate offer is from CompuServe and requires a three year Internet service contract. Consumers could purchase the Aptiva E572 Micro Tower, with its associated rebate offer, from respondent online without viewing Exhibit D.3. No Arebate form@ or additional details about the CompuServe rebate offer are available at or from Value America=s Web site. An undisclosed hyperlink behind the phrase A\$400 Mail-In Offer from Compuserve@ links to the home page of a third party Web site, which home page does not contain any information about the advertised rebate or any hyperlinks that refer or relate to the advertised rebate offer. Although information about other material terms and conditions of the CompuServe rebate offer is available on interior pages of the third party Web site, Value America=s Web pages do not hyperlink to these pages or otherwise provide access to this information.)

Exhibit E: Web banner ad

FREE PC!		emachines etower 366C	Cyrix MII 366PR Monitor not included
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6. Through the means described in Paragraph 5, including but not necessarily limited to Exhibits A through E, respondent has represented, expressly or by implication, that the total cost of the advertised computer systems is \$899 for the Toshiba Satellite 2100CDS laptop, \$449 for the Hewlett-Packard Pavilion 4535 Multi-media PC, \$1299 for the Proteva PC and bundled video camera, printer, scanner and software, \$619 for the Aptiva E572 Micro Tower computer and FREE for the emachines etower 366C computer.

7. In truth and in fact, the total cost of the computers and bundled components described in Paragraph 6 was not as advertised. In order to obtain the advertised computer systems and bundled components at the prices advertised, consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for 36 months at an additional cost of \$19.95 to \$21.95 per month or, in the case of CompuServe Internet Service, optional full pre-payment of \$790.20. Therefore, the representations set forth in Paragraph 6 were, and are, false or misleading.

8. In its advertisements, including but not limited to Exhibits A through E, for the computers and bundled components described in Paragraph 6, respondent has represented that the total cost of the advertised computer systems, respectively, is \$899, \$449, \$1299, \$619, and FREE. In these advertisements, respondent has failed to disclose or failed to disclose adequately:

- (a) that in order to obtain the advertised computers and bundled components for the advertised prices, consumers are required to subscribe to CompuServe 2000 Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for 36 months at an additional cost of \$19.95 to \$21.95 per month or in the case of CompuServe Internet Service, optional full pre-payment of \$790.20;

Complaint

- (b) with respect to Exhibits B and E, the amounts of the rebates - \$400 for the Internet service rebate - and the total price of the computer system, with bundled components where applicable, before rebates;
- (c) that consumers who terminate their Internet service contracts within three years must repay all or a prorated portion of the \$400 rebate and, in the case of the CompuServe and Prodigy rebate offers, also pay a cancellation fee of up to \$50;
- (d) that it can take up to eight weeks after payment has been received for the consumer=s second monthly Internet service membership fee, or a total of 12 to 17 weeks, to receive the \$400 Prodigy Internet rebate; and
- (e) that CompuServe 2000 Premier Internet, Prodigy Internet, and Microsoft MSN Plus Internet Access do not provide local access telephone numbers for their respective Internet services in all areas, and therefore that many consumers must either pay long distance telephone charges or surcharges of up to \$6.00 per hour to access their Internet services.

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

9. Through the means described in Paragraph 5, including but not necessarily limited to Exhibit D, respondent has represented, expressly or by implication that the IBM Aptiva E572 Micro Tower computer includes a monitor at the advertised after-rebate price of \$619 or the total price of \$1,019. The IBM Aptiva E572 Micro Tower is depicted in Exhibit D with a monitor, with the IBM Aptiva logo written across the monitor, on both the initial product offering Web page and on subsequent Web pages advertising and offering this model for sale.

Complaint

10. In truth and in fact, the depicted IBM Aptiva E572 Micro Tower does not include a monitor at the advertised after-rebate price of \$619 or the total price of \$1,019. Consumers must purchase a monitor separately. Although there is a statement on one page of the Internet ad indicating that a monitor is not included, the hyperlinks leading to the disclosure page are not labeled as referring or relating to the monitor, and the statement can be viewed only by scrolling to the bottom of the page, past a list of more than twenty technical product specifications. Furthermore, this disclosure is avoidable entirely before purchase by those consumers who view the depiction and proceed directly to the online ordering and payment process. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. In numerous instances, after having solicited telephone orders for merchandise, including but not limited to orders submitted over the Internet at its Web site, and having received properly completed orders, as that term is defined in Section 435.2(d) of the Mail Order Rule, 16 C.F.R. ' 435.2(d), respondent has been unable to ship some or all of the ordered merchandise to the buyer within the time stated in the solicitation, or if no time was stated, within 30 days, as required by Section 435.1(a)(1) of the Mail Order Rule, 16 C.F.R. ' 435.1(a)(1).

12. In numerous instances in which respondent was not able to ship ordered merchandise as set forth in Paragraph 11, respondent solicited such orders when it had no reasonable basis to expect that it would be able to ship some or all of such merchandise within the time stated in the solicitation, or if no time was stated clearly and conspicuously in the solicitation, within thirty (30) days after receipt of a properly completed order, thereby violating 16 C.F.R. ' 435.1(a)(1).

13. In numerous instances in which respondent was not able to ship ordered merchandise as set forth in Paragraph 11, respondent

Complaint

failed to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, thereby violating 16 C.F.R. ' 435.1(b)(1).

14. In numerous instances in which respondent was not able to ship ordered merchandise as set forth in Paragraph 11, having failed to offer the affected buyers an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by 16 C.F.R. ' 435.1(b)(1), respondent failed to deem the order cancelled and to make a prompt refund to the buyer involved, thereby violating 16 C.F.R. ' 435.1(c)(5).

15. 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, 15 U.S.C. ' 45(a).

THEREFORE, the Federal Trade Commission this fifth day of September, 2000, has issued this complaint against respondent.

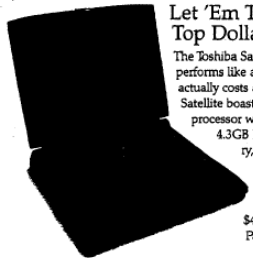
By the Commission.

Complaint Exhibits

Complaint Exhibits

Get Out of Here

Hit the Road with Our Notebooks and Palm PCs.



Let 'Em Think You Paid Top Dollar

The Toshiba Satellite 2100CDS looks and performs like a high-priced notebook, but actually costs a lot less. Built for speed, this Satellite boasts a 400MHz AMD K6-2 processor with 3D Now! technology, 4.3GB hard drive, 32MB of memory, a built-in 56KV.90 modem, and a CD-ROM drive.

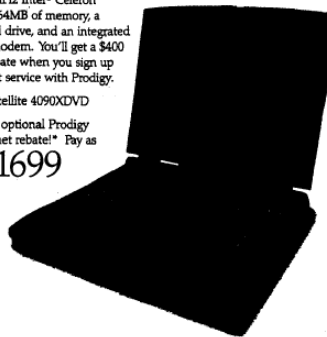
Toshiba Satellite
\$1299, less optional Prodigy
\$400 Internet rebate!* Pay as
little as **\$899**

Symantec Norton AntiVirus 2000 v6.0
\$34.95, less \$20.00 mfr's mail-in upgrade
rebate: **\$1495**

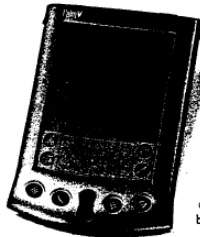
Big, Fast, and Versatile

Toshiba's Satellite notebook computer features a huge 14.1" TFT active-matrix display for a great look. View movies using the DVD-ROM drive. It has a 400MHz Intel® Celeron™ processor, 64MB of memory, a 6.4GB hard drive, and an integrated 56KV.90 modem. You'll get a \$400 mail-in rebate when you sign up for Internet service with Prodigy.

Toshiba Satellite 4090XDVD
\$2099, less optional Prodigy
\$400 Internet rebate!* Pay as
little as **\$1699**



The Most Popular Palm PC



The Palm V handheld organizer offers a slick, anodized aluminum frame and peerless data control. But it's got more than just good looks. The Palm V also has scads of memory—there's room to store about 6,000 addresses, five years of appointments, to-do lists, and other great applications. Style and substance come together in this organizer, a member of the famous 'Palm' family from 3Com. It comes with HotSync cradle, stylus pen, and rechargeable battery.

3COM Palm V **\$349**

The Coolest Gift of the Year

Apple packs power and personality into what's sure to be this holiday season's bestseller. The iBook is a yummy, translucent dream of a notebook with a pull-out handle, a PowerPC G3 processor, a CD-ROM drive,

a modem and built-in ethernet, and the option to go totally wireless, even when connected to the Net. It's tough, too—designed to survive transport in a student's backpack! Order your iBook now, and we'll give you a Umax Astra 2000U USB Color Flatbed Scanner.

Apple iBook with Umax Scanner
\$1639, less \$40 mail-in rebate.
Your price: **\$1599**



Symantec
PC Anywhere 9.0
\$8995

The Value America Credit Card



No Interest, No Payments for 90 Days!*

Offer Details: *\$199 minimum purchase required. With credit approval for purchases made on the Value America Credit Card. As of September 31, 1999, APR: Best Rate 22.26%; Std. Rate 24.26% (rates may vary). Min. Pm. Chg. \$50. See Revolving Credit Agreement for details. Offer is for individuals, not businesses. Offer expires December 31, 1999.

Finance Charges: Finance Charges accrue from the date of purchase and all accrued Finance Charges will be added to your Account for the entire deferred period if qualifying purchases are not paid in full by the end of the deferred payment period or if you fail to make any required payment on your Account when due.

*Prodigy Offer Terms & Conditions: Offer limited to new Prodigy Internet members only and valid only in the United States. Mail-in rebate valid only on qualifying Toshiba notebook computers purchased from authorized Toshiba resellers to direct mail resellers between August 1, 1999, and December 31, 1999, and accompanied by enrollment in a fixed-term "Toshiba-Toshiba Prodigy Internet" membership on Prodigy Internet between August 1, 1999, and January 31, 2000, using only the CD sent to you per this request. Enrollment in the Prodigy Internet service must be completed with an automatic payment plan on a valid major credit card. Payment of \$15.00 per month is required for the length of your commitment. Mail-in rebate offer is subject to all Terms & Conditions on the reverse side of the mail-in rebate form which you will receive with your CD. Rebate checks will be processed within 6 weeks after Prodigy has received payment for your second monthly Prodigy membership fee, received your properly completed rebate form with a legible copy of your store receipt, and established your creditworthiness. If you cancel your membership prior to the end of your fixed term enrollment commitment, your credit card will be charged a cancellation fee equal to the amount of your Prodigy Internet mail-in rebate plus a \$50 service fee as described in the Terms and Conditions on the mail-in rebate form. Rebate offered by Prodigy and not Toshiba.

Buy Everything You Need for
Your Home & Office Online @

ValueAMERICA.com

Shop Online: VA.com
or Call Toll-Free: (888) 222-7527

Exhibit A

Complaint Exhibits

Value America HP Pavilion 4535 - Intel Celeron Radio :60 1.3	
ANNCR:	<p>ValueAmerica.com...changing the way America buys.</p> <p>This week at ValueAmerica.com...</p> <p>we have the NEW Hewlett-Packard Pavilion 4535 Multi-media PC...</p> <p>with the Intel CELERON Processor...</p> <p>400 megahertz...</p> <p>(Intel bong)</p> <p>...it comes with a CD-ROM, Windows 98, and a 56K Modem.</p> <p>Imagine the quality of H-P at a price of less than \$500...</p> <p>In a package that also includes stereo speakers, a color monitor and a color printer...</p> <p>At ValueAmerica, this H-P Pavilion 4535 Multi-media PC, with the Intel CELERON Processor...</p> <p>is ONLY 449!...after internet rebate.</p> <p>You heard right! 449 and if you call right now, we'll throw in FREE DELIVERY!</p> <p>To take advantage of this week's special, the H-P Pavilion 4535 for only 499, with FREE Shipping...</p> <p>Call now at 888-400-VALU...</p> <p>888-400-8258 or go online at ValueAmerica.com.</p>

last revised: 10/22/99 4:08 PM

Exhibit B

Complaint Exhibits

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. 9923206

TITLE VALUE AMERICA, INC.

**DATE RECORDED: OCTOBER 12, 1999
TRANSCRIBED: JANUARY 12, 2000**

PAGES 1 THROUGH 47

VIDEOTAPE - PROTEVA COMPUTER SYSTEM

**FOR THE RECORD, INC.
603 POST OFFICE ROAD, SUITE 309
WALDORF, MARYLAND 20602
(301)870-8025**

Exhibit C

(Transcript not reproduced here; relevant portions are quoted in complaint)

Complaint Exhibits

Home Computers

http://www.valueamerica.com/products.asp?p=0.0.0.0.66.0.0.0.0&i=1.8&r=0.0.0.0.0


Computers **ValueAMERICA**

Search Shopping List Sign In Account Info Checkout Help

















Main ▶ Computers ▶ Home Computers ▼

▶ View Categories
View Brands
View Hot Buys

Home Computers

IBM Solutions for Home **Aptiva® Multimedia PCs**  View Presentation

Click below for more products

Click for Detail	Product Description	More Info	Your Price	Shopping List
 Acer	 Aptiva E550 Micro Tower Price reflects \$400.00 Mail-in Rebate Intel® Pentium® III 500MHz Processor / 96MB / 17GB / DVD-ROM / CD-RW / 56Kbps Modem / Win98 (2nd Edition)	X ✓	\$899.00	Sold Out
 Apple	 Aptiva E550 Micro Tower Price reflects \$500.00 Mail-in Rebate AMD® Athlon™ 550MHz Processor / 96MB / 20.4GB / 56Kbps Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)		\$809.00	Add to List
 Compaq	 Aptiva E765 Micro Tower Price reflects \$400.00 Mail-in Rebate AMD® Athlon™ 650MHz Processor / 128MB / 20.4GB / 56Kbps Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)	✓	\$1,899.00	Add to List
 emachines	 Aptiva E550 Micro Tower Price reflects \$500.00 Mail-in Rebate AMD® Athlon™ 550MHz Processor / 96MB / 20.4GB / 56Kbps Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)		\$809.00	Add to List
 HP	 Aptiva E550 Micro Tower Price reflects \$500.00 Mail-in Rebate AMD® Athlon™ 550MHz Processor / 96MB / 20.4GB / 56Kbps Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)		\$809.00	Add to List
 IBM	 Aptiva E550 Micro Tower Price reflects \$500.00 Mail-in Rebate AMD® Athlon™ 550MHz Processor / 96MB / 20.4GB / 56Kbps Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)		\$809.00	Add to List
 ECCM	 Aptiva E550 Micro Tower Price reflects \$500.00 Mail-in Rebate AMD® Athlon™ 550MHz Processor / 96MB / 20.4GB / 56Kbps Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)		\$809.00	Add to List
 Systemax	 Aptiva E550 Micro Tower Price reflects \$500.00 Mail-in Rebate AMD® Athlon™ 550MHz Processor / 96MB / 20.4GB / 56Kbps Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)		\$809.00	Add to List








IBM Solutions for Home **Aptiva® Multimedia PC Value Bundles**  View Presentation

Exhibit D.1

Complaint Exhibits

Home Computers

http://www.valueamerica.com:80/products.asp?p=0.0.0.0.0.66.0.0.0.0&i=1.8&z=0.0.0.0.0

Click for Detail	Product Description	More Info	Your Price	Shopping List
	Aptiva E572 Micro Tower Computer w/ 17" Monitor, Canon Printer, UMAX Flatbed Scanner Price reflects \$580.00 Mail-in Rebate AMD® Athlon™ 500MHz Processor / 96MB / 17GB / 56Kbps Modem / DVD-ROM / Win98 (2nd Edition)	✓	\$919.00	Add to List
				
	Aptiva E595 Micro Tower w/ 17" Aptiva Monitor, Canon Printer, and UMAX Scanner Price reflects \$580.00 Mail-in Rebate AMD® Athlon™ 600MHz Processor / 128MB / 20.4GB / 56K Modem / DVD-ROM / CD-RW / Win98 (2nd Edition)	✓	\$1,479.00	Add to List
				
	Aptiva E805 Micro Tower w/15" Monitor, Canon Printer & UMAX Scanner Price reflects \$480.00 Mail-in Rebate AMD®-K6-2 500MHz Processor / 64MB / 10GB / CD-ROM / 56K Modem / Win 98	✓	\$569.00	Add to List
				

Product Status Legend
(For more info, hold your cursor over any icon.)

✗ Sold Out

✓ Shipping Included

[Back To Top](#)

[Search](#) | [Shopping List](#) | [Sign In](#) | [Account Info](#) | [Checkout](#) | [Help](#)
[You Have Our Word](#) | [Security & Privacy](#) | [Contact Us](#)
Order Status

© Copyright 1999 Value America, Inc. All Rights Reserved.

Complaint Exhibits

[View Product](#)

<http://www.valuamerica.com:80/product.a...39665.195067.66.10.0.0&i=1.8&r=0.1.2.6.0>

Computers		VIA AMERICA™	
Search	Shopping List	Sign In	Account Info
		Checkout	Help
Main ▶ Computers ▶ View Product ▼			

 <p>Solutions for Home</p>  <p>Click to Magnify</p>	<p>Aptiva E572 Micro Tower AMD® Athlon™ 500MHz Processor / 96MB / 17GB / 56Kbps Modem / DVD-ROM / Win98 (2nd Edition)</p> <hr/> <p>Your Price: \$1,019.00 Price After Rebate: \$619.00 Unit Shipping: \$35.00</p> <p align="right">  View Presentation  </p>
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<ul style="list-style-type: none"> Product Overview Specifications Manufacturer Info Product Rebates 	<h3 align="center">Specifications</h3> <ul style="list-style-type: none"> AMD® Athlon™ 500MHz processor. 200MHz front side bus. Memory (std./max.): 96MB/384MB. 17GB hard disk drive. 6x-2.5x variable speed DVD-ROM. 3.5" 1.44MB floppy drive. 56K (v.90 compatible) data/fax modem. 512KB L2 cache. Video memory: 8MB SGRAM. Graphics controller: S3 Savage 4/AGP 2X. Audio: ESS Solo 1 chip. 3 USB ports. Slots (total/available): 5 PCI, 1 AGP/3 PCI. Bays (total/available): 5/2. Operating System: Microsoft Windows® 98 (2nd Edition). Additional software includes: Internet Explorer Access to the Net, Internet Explorer, MSN Explorer, Outlook Express, Direct Connect, and the NetVista User's Guide. Optional software includes: Norton AntiVirus, Norton Backup, Norton Firewall, Symantec Security Advisor, Symantec Small Business Manager. *The actual unit value and shipping charges are subject to change without notice. <p align="right">© 2000 VIA America Inc. All rights reserved. Model # 100-22114</p>
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Exhibit D.2

1 of 2

01/10/2000 1:21 PM

Complaint Exhibits

View Product <http://www.valueamerica.com:80/product.a...39665.195067.66.45.0.0&l=1.8&r=0.1.2.6.0>

Computers 



Search Shopping List Sign In Account Info Checkout Help

Main Computers View Product

IBM
Solutions for Home

Aptiva E572 Micro Tower
AMD® Athlon™ 500MHz Processor / 96MB / 17GB / 56Kbps Modem
/ DVD-ROM / Win98 (2nd Edition)

Your Price: \$1,019.00
Price After Rebate: \$619.00
Unit Shipping: \$35.00

 Click to Magnify  [Add to List](#)

Product Overview
Specifications
Manufacturer Info
Product Rebates

\$400 Mail-In Offer from CompUSA
3 year Internet Service contract and major credit card required. Valid with a purchase of an IBM Aptiva PC and monitor from July 18, 1999 to January 31, 2000. See rebate form for complete details.

Conditional \$100 Mail-In Rebate from IBM
Valid on purchase of select Aptiva PCs and monitors from November 6, 1999 through January 29, 2000. See rebate form for complete details.

Please Note: This form is in .pdf format which requires Adobe Acrobat Reader to view. This program is available at no charge from Adobe on their website: www.adobe.com.

Search | Shopping List | Sign In | Account Info | Checkout | Help
You Have Our Word | Security & Privacy | Contact Us
Order Status

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Exhibit D.3

Complaint Exhibits



Exhibit E

Decision and Order

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 Bureau of Consumer Protection 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, its attorney, and counsel for the Federal Trade 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 received, 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 Value America, Inc., is a Virginia corporation with its principal office or place of business at 2300 Commonwealth Drive, Charlottesville, Virginia 22901.

Decision and Order

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. "Rebate" shall mean cash, instant savings, instant credit, credit towards future purchases, merchandise, services, or any other consideration offered to consumers who purchase products or services from respondent, which is provided at the time of purchase, or subsequent to the purchase.
2. Unless otherwise specified, "respondent" shall mean Value America, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "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, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented predominantly through audio or visual means, the disclosure may be made through the same means in which the ad is predominantly 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.

Decision and Order

- B. In a print advertisement, promotional material, 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.

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.

4. In the case of advertisements disseminated by means of an interactive electronic medium, such as software, the Internet, or online services:

(i) 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;

(ii) a disclosure made A 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.

5. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. ' 44.

6. The term A Mail or Telephone Order Merchandise Rule@ means the Federal Trade Commission=s Trade Regulation Rule

Decision and Order

entitled AMail or Telephone Order Merchandise,@ 16 C.F.R. Part 435, and as it may hereafter be amended.

7. AEligible purchaser@ shall mean any person, firm or other entity that ordered and paid for any product from respondent prior to the date of service of this order, whose product has not been shipped by respondent, and who has not previously received a refund and who has not previously consented to a delay in shipping; and more than ten (10) days have passed after the date stated by respondent in the solicitation for shipment or the delay notice (or if no time was stated, thirty (30) days after receipt of the properly competed order or issuance of the delay notice).

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the price or cost to consumers of such product or service or what is included in the price of any such product or service.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of any such computer, computer-related product or Internet access service when that price, cost, or any rebate is conditioned upon the purchase of any other product or service, unless it discloses clearly and conspicuously, and in close proximity to the representation, that consumers must purchase the other product or service in order to obtain the represented price or rebate and the

Decision and Order

cost of the other product or service, including if a service, the length of time that consumers are required to purchase the service.

Provided, that for purposes of this Part, use of the term Arebate@ or Adiscount,@ without any description or characterization of either term, shall not, in and of itself, be deemed a representation about the price or cost to consumers of a product or service.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the after-rebate cost of such product or service, unless it discloses, clearly and conspicuously, and in close proximity to the representation, the amounts of any and all rebates offered and the total price or cost to consumers of the product or service, excluding any and all rebate amounts (*i.e.*, the before-rebate price).

Provided, however, if (1) the offer involves only one rebate and no other reductions in the total price of such product or service, and (2) respondent discloses the amount of that rebate as prescribed above, then respondent need not disclose the before-rebate price or cost of such product or service.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any Internet access service, or any computer or computer-related product for which the price, cost or

Decision and Order

any rebate is conditioned upon the purchase of Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of such Internet access service, unless it discloses, clearly and conspicuously:

- A. the dollar amounts of any and all fees, charges, rebate repayments, and other costs consumers are required to pay to cancel the Internet access service;
- B. (1) that consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone service charges to access the Internet service, if that is the case; and (2) a means for each consumer to ascertain whether he or she would incur such costs or charges to access the Internet service and the amount of any such costs or charges. Provided that respondent may comply with Part IV.B (2), above, by disclosing a means by which consumers may obtain information from the Internet service provider about available access phone numbers and the amount of any hourly surcharges or other costs to access the Internet service, and by advising consumers to contact their local telephone company to determine whether using the access telephone number closest to them will incur charges in excess of local service charges; and
- C. the amount of time required for purchasers to receive any rebate.

Provided that in the case of advertisements disseminated through an interactive electronic medium, such as software, the Internet or other online services, respondent may make the disclosures required by this Part through the use of a hyperlink. In addition,

- 1. for Part IV.A, above, any such hyperlink must be labeled: AEarly Cancellation of the Internet Service May Result in Substantial Penalties. Click Here.®;

Decision and Order

2. for Part IV.B, above, any such hyperlink must be labeled: AYou May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here. @;
3. for Part IV.C , above, any such hyperlink must be labeled: ATime to Receive Rebate. Click Here. @

V.

IT IS FURTHER ORDERED that respondent Value America, Inc., directly or through any corporation, subsidiary, division or other device shall not violate any provision of the Mail or Telephone Order Merchandise Rule, including but not limited to:

- A. Soliciting orders for the sale of telephone order merchandise unless it has a reasonable basis to expect that it will be able to ship some or all of such merchandise within the time stated in the solicitation or, if no time is stated clearly and conspicuously in the solicitation, within thirty (30) days after receipt of a properly completed order, as required by 16 C.F.R. ' 435.1(a)(1);
- B. Where respondent is unable to ship within the applicable time set forth in 16 C.F.R. ' 435.1(a)(1), failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by 16 C.F.R. ' 435.1(b)(1); and
- C. Having failed to offer the option to consent to a delay or to cancel the order and receive a prompt refund, as required by 16 C.F.R. ' 435.1(b)(1), and also having failed to ship the merchandise within the applicable time, failing to

Decision and Order

deem the order canceled and to make a prompt refund, as required by 16 C.F.R. ' 435.1(c)(5).

Provided that, in the event the Mail or Telephone Order Merchandise Rule is hereafter amended or modified, respondent=s compliance with the Mail or Telephone Order Merchandise Rule as so amended or modified shall not be deemed a violation of this order.

VI.

IT IS FURTHER ORDERED that respondent Value America, Inc., and its successors and assigns, shall, for a period of five (5) years from the date of issue of this Order, maintain and make available to the Federal Trade Commission, within thirty days (30) days of the date of receipt of a written request, business records demonstrating compliance with the terms and provisions of Part V.

VII.

IT IS FURTHER ORDERED that respondent shall provide refunds to eligible purchasers in accordance with the provisions of this Part.

- A. Within twenty (20) days from the date of service of this order, respondent shall compile a list containing: (1) the name, last known mailing address, phone number and electronic mail address of each eligible purchaser; and (2) the total price paid by each such eligible purchaser for all products ordered but not received, including all charges for applicable taxes and for shipping and handling, if any. Respondent shall retain a National Change of Address System (ANCOA@) licensee to update the mailing addresses on this list by processing the name and mailing address portion of this list through the NCOA database, provided that respondent=s obligation to retain such an

Decision and Order

NCOA licensee shall expire at such time as respondent completes its compilation of the above-referenced list.

- B. Within thirty (30) days after the date of service of this order, respondent shall cancel the order of each eligible purchaser contained on the list required by Part VII.A, and shall send to each such person, via first-class mail, a Refund Notice in the form set forth in Appendix A, accompanied by a check for the amount stated on the list. The phrase: A NOTICE: REFUND CHECK ENCLOSED@ shall appear on the front of the envelope transmitting the Refund Notice in typeface equal or larger in size to 14 point. The words A Forward and Address Correction Requested@ shall appear in the upper, left-hand corner one-quarter of an inch beneath the return address.

Provided that, in lieu of mailing a refund check to any eligible purchaser, respondent may credit each such eligible purchaser=s credit card or debit card account for the amount stated on the list required by Part VII.A, and shall send the Refund Notice via electronic mail. The subject line of the electronic mail shall state A Refund Credit.@ The Refund Notice shall include the amount of the refund credit and the date such action was taken.

The Refund Notice shall not include any information other than that contained in Appendix A, nor shall any other material be transmitted with the notice, except for a refund check, if applicable.

- C. Within sixty (60) days after the date of service of this order, respondent shall furnish to Federal Trade Commission staff:

1. a copy of the list required by Part VII.A,

Decision and Order

2. for each eligible purchaser, (a) the amount, check number and mailing date of the refund check mailed to such purchaser, or (b) the amount credited to such person=s credit card or debit card account, and the date on which it was credited.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondent Value America, 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 request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;

Provided however, that in the case of advertisements and promotional materials disseminated by means of an interactive electronic medium, respondent and its successors and assigns may comply with this provision by maintaining and making available all advertisements and promotional materials for computer or computer-related products or services for which the price, cost or any rebate is conditioned upon the purchase of Internet access service; but, multiple versions of advertisements and promotional materials need not be maintained or submitted, if they differ only in terms of the prices of the products or services being offered;

- B. All materials that were relied upon in complying with this order; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their 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.

IX.

Decision and Order

IT IS FURTHER ORDERED that respondent Value America, Inc., and its successors and assigns, shall deliver a copy of this order and the Mail or Telephone Order Merchandise Rule to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent 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.

X.

IT IS FURTHER ORDERED that respondent Value America, 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. 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

XI.

IT IS FURTHER ORDERED that respondent Value America, Inc., and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission

Decision and Order

a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

This order will terminate on September 5, 2020, 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.

By the Commission.

Decision and Order

APPENDIX A**REFUND NOTICE**

[To be printed on Value America, Inc. letterhead]

[Date]

[Name and address of recipient]

Dear [recipient=s name]:

Our records show that you have an outstanding order of merchandise from Value America. Pursuant to the terms of an agreement with the Federal Trade Commission concerning our merchandise delivery practices, we have agreed to provide full refunds to any customer whose shipment has not been made within ten days of the date we promised. Because your merchandise has not been shipped, you are entitled to a refund.

We have [enclosed a refund check] [credited your charge or debit card on [date]] for [amount of redress]. This amount includes the purchase price(s) for the merchandise you ordered, plus any taxes and shipping and handling charges. If you still wish to purchase the merchandise, you may reorder it from Value America.

Please call toll-free 1-800-XXX-XXXX or see our website at www.va.com if you have any questions.

Sincerely,

[Name and title of Value America, Inc. official]

Analysis to Aid Public Comment

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Value America, Inc. (Arespondent@).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement=s proposed order.

Respondent advertises, sells, and distributes personal electronic devices, computer software, personal computers, and other products through its Internet Web site (reached by <www.va.com> or <www.valueamerica.com>), and through toll-free telephone numbers. This matter concerns allegedly false and deceptive advertising claims regarding the sale of various computer systems based upon a \$400 rebate that required consumers to enter into a three year contract for Internet service. This matter also concerns alleged violations of the Mail or Telephone Order Merchandise Rule.

The Commission=s proposed complaint alleges that respondent falsely claimed that the total cost of a Toshiba Satellite 2100CDS laptop was \$899; that the total cost of a Hewlett-Packard Pavilion 4535 Multimedia PC was \$449; that the total cost of a Proteva computer system was \$1299; that the total cost of an IBM Aptiva E572 Micro Tower computer was \$619; and that an emachines etower 366C computer was Afree.@ In fact, in order to obtain these computers at the advertised prices, consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of \$19.95

Analysis to Aid Public Comment

to \$21.95 per month or, in the case of CompuServe Internet Service, an optional full pre-payment of \$790.20.

The complaint also alleges that when respondent represented that the total cost of the computers was, respectively, \$899, \$449, \$1299, \$619, or Afree,@ respondent failed to disclose or failed to disclose adequately: (a) that consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of \$19.95 to \$21.95 per month or, in the case of CompuServe Internet Service, an optional full pre-payment of \$790.20; (b) the amounts of the rebates, and the total price of the computer systems before rebates with respect to the Hewlett-Packard Pavilion 4535 Multimedia PC, and the emachines etower 366C computer; (c) that consumers who cancel the Internet service within three years must repay all or portion of the \$400 rebate and, in the case of the CompuServe and Prodigy rebate offers, also pay a cancellation fee of up to \$50; (d) that, in the case of the Prodigy rebate, it can take a total of 12 to 17 weeks to receive the \$400 rebate; and (e) that CompuServe, Prodigy, and Microsoft do not provide local access telephone numbers for their respective Internet services in all areas, and therefore, that many consumers must either pay long distance telephone charges or, in the case of CompuServe 2000 or Prodigy Internet, \$6.00 per hour to access their Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

In addition, the complaint alleges that respondent falsely claimed that the IBM Aptiva E572 Micro Tower computer included a monitor at no additional cost. In fact, consumers must purchase a monitor separately. The complaint also alleges that in numerous instances, respondent failed to ship some or all of the ordered merchandise to the buyer within the time stated in the solicitation, or if no time was stated, within 30 days after receipt of a properly completed order, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship some or all of the ordered merchandise to the buyer, respondent failed to offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt

Analysis to Aid Public Comment

refund, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship ordered merchandise to the buyer, and having failed to offer the affected buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by the rule, respondent failed to deem the order canceled and to make a prompt refund to the buyer, as required by the Mail Order Rule.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service or what is included in the price of any such product or service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased, along with the length of time consumers are required to purchase such other service. Part II also contains a proviso that permits respondent to use the terms Arebate@ or Adiscount@ without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close

Analysis to Aid Public Comment

proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (i.e., the before-rebate price). Part III also contains a proviso that states that if there is only one rebate involved in the offer, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

In connection with the promotion or sale of any Internet access service, or any computer or computer-related product whose price is conditioned upon the purchase of Internet access service, Part IV of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any Internet access service, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. In addition, respondent must disclose the amount of time required for purchasers to receive any rebate. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of *through the use of a hyperlink*, provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is itself clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclose information about Internet cancellation terms, it

Analysis to Aid Public Comment

must be labeled as follows: AEarly Cancellation of the Internet Service May Result in Substantial Penalties. Click Here.@ Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: AYou May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here.@ Finally, if a hyperlink is used to disclose information about the time it takes to receive a rebate, it must be labeled: ATime to Receive Rebate. Click Here.@"

Part V of the proposed order prohibits respondent from violating any provision of the Mail or Telephone Order Merchandise Rule, including the soliciting of orders for merchandise, either by mail or phone, without a reasonable basis to expect to be able to ship some or all of the merchandise within the time stated in the solicitation, or if no time is stated, within 30 days of receiving a properly completed order. Respondent must offer the buyer the option of either consenting to a delay in shipping or canceling the order and receiving a prompt refund when respondent is unable to ship within the applicable time period. Respondent must also deem the order canceled and make a prompt refund in instances where respondent failed to ship on time and failed to offer the buyer the option of either consenting to the delay or canceling the order and receiving a prompt refund.

Part VI of the proposed order requires respondent to maintain and make available to the Commission for five years, business records demonstrating compliance with the terms and conditions of Part V. Part VII of the proposed order requires respondent to compile a list of purchasers who ordered products from respondent and paid for them prior to the service date of the order, and who had not previously received a refund or consented to a delay, but did not receive ordered products more than ten days after the date respondent stated they would be shipped, or the date of the delay notice. Respondent must then cancel each such order and send a refund to each purchaser on the list for the total amount paid, including all taxes and shipping and handling

Analysis to Aid Public Comment

charges, if any. Respondent must furnish the list of purchasers to the Commission, indicating for each the amount and date the refund was paid.

Part VIII of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

Part IX of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part X of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part XI of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part XII of the proposed order is a sunset provision, dictating that the order will terminate twenty years after the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

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

Complaint

IN THE MATTER OF

BUY.COM INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3978; File No. 9923282**Complaint, September 5, 2000--Decision, September 5, 2000*

This consent order addresses BUY.COM's advertising claims regarding the sale of a \$269 Compaq Presario 5304 computer system based upon a \$400 rebate that required consumers to enter into a three year contract for Internet service. The complaint alleges that BUY.COM represented that the total cost of the computer system was \$269, but failed to disclose pertinent requirements and rebates necessary to purchase at the advertised price. The consent order prohibits BUY.COM from misrepresenting the price or cost to consumers of computer or computer related equipment, or from representing the cost of any of these products if that price is conditioned on the purchase of another product without disclosing the condition clearly and conspicuously along with the price of the additional product or service that must be purchased. The order also prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts. Additionally, the order prohibits Respondent from making any representation about the cost of Internet access services unless it discloses the following material facts: (1) if consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service; (2) the amounts of such costs must be disclosed; (3) if consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service; (4) the amount of time required for purchasers to receive any rebate. These disclosures can be made through hyperlinks if the hyperlink clearly indicated the nature and importance of the information included.

Participants

For the Commission: *Michael Dershowitz, Michael Ostheimer,
Joel Winston, C. Lee Peeler, and BE.*

Complaint

For the Respondents: *Michael B. Green, Brobeck, Phleger, & Harrison.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BUY.COM Inc., a corporation ("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 BUY.COM Inc. is a Delaware corporation with its principal office or place of business at 85 Enterprise, Aliso Viejo, California 92656.
2. Respondent has advertised, offered for sale, sold, and distributed products to the public, including books, music and video recordings, personal electronic devices, computer software, and personal computers. BUY.COM sells these products through its Internet Web site, <www.buy.com>.
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.
4. Respondent has disseminated or has caused to be disseminated advertisements for a Compaq Presario 5304 computer system, including but not necessarily limited to the attached Exhibits A through C. Exhibit A is a newspaper advertisement. Exhibit B is a subsequent newspaper and magazine advertisement. Exhibit C is a Web site advertisement. The advertisements contain the following statements:

A.

[Depiction: A Compaq Presario 5304 computer system.]

"COMPAQ PRESARIO 5304 SYSTEM

Complaint

WITH REBATES, INCLUDES 15" MONITOR, SPEAKERS,
COLOR INKJET PRINTER, KEYBOARD,
MOUSE, AND FREE SHIPPING. VISIT WWW.BUY.COM
TODAY FOR REBATE DETAILS.

\$269

CAN YOU FIND
THE TYPPO
IN THIS AD?"

[An extremely fine print disclosure, in approximately 4 point type, at the very top of the ad states:

"BUY.COM, J BUYCOMP.COM, J BUYSOFT.COM, J
BUYBOOKS.COM, J BUYVIDEOS.COM, J
BUYGAMES.COM, J BUYMUSIC.COM, J and
BUYSURPLUS.COM J are trademarks or servicemarks of
BUY.COM Inc. Prices subject to change. Quantities limited.
Requires Compuserve activation. See site for details.
Buy.com reserves the right to cancel this offer at any time.
81999"]

(Exhibit A, Full page newspaper advertisement that appeared in USA Today, The Washington Post, The New York Times, The Sacramento Bee, The San Jose Mercury News, and The Wall Street Journal.)

B.

[Depiction: A Compaq Presario 5304 computer system.]

"COMPAQ PRESARIO 5304 SYSTEM

WITH REBATES, INCLUDES 15" MONITOR, SPEAKERS,
COLOR INKJET PRINTER, KEYBOARD,

Complaint

MOUSE, AND FREE SHIPPING. REQUIRES 36-MONTH
COMPUERVE 2000 PREMIER INTERNET SERVICE
CONTRACT AT \$21.95 PER MONTH. VISIT
WWW.BUY.COM TODAY FOR ALL THE REBATE
DETAILS.

\$269*

CAN YOU FIND
THE TYPPO
IN THIS AD?"

[A very fine print disclosure, in approximately 5 point type, at the very top of the ad states:

"*BUY.COM, J BUYCOMP.COM, J BUYSOFT.COM, J
BUYBOOKS.COM, J BUYVIDEOS.COM, J
BUYGAMES.COM, J BUYMUSIC.COM, J and
BUYSURPLUS.COM J are trademarks or servicemarks of
BUY.COM Inc. Prices subject to change. Quantities limited.
Complete System \$869.00 - \$400 CompuServe 2000 Premier
Internet Mail-in Rebate - \$200 Compaq Bundle Mail-in
Rebate. Requires 36 months of Compuserve 2000 Internet
service at \$21.95 a month. Early cancellation may result in
additional charges. See site for details. BUY.COM reserves
the right to cancel this offer at any time. 1999"]

(Exhibit B, Full page newspaper and magazine advertisement that
appeared in The Wall Street Journal and PC Week Magazine).

C.1.

"BUYCOMP.COM
The Internet Computer Superstore

COMPAQ

\$269* *[Depiction: A Compaq Presario 5304
FREE Ground Shipping! computer system]*

Complaint

* After rebates

A Complete System \$269.00" [Hyperlink to: Exhibit C.3.]

(Exhibit C.1., The home page of respondent=s Web site, <www.buy.com>).

C.2.

"COMPAQ \$269*

[Depiction: A Compaq Presario 5304 computer system] includes: computer, monitor with speakers, and printer.

Click Here Now!
[Hyperlink to: Exhibit C.3.]

FREE Ground Shipping!
***With rebates. Requires three year subscription to CompuServe internet service."**

(Exhibit C.2., The main page of BUYCOMP.COM, the computer section of respondent=s Web site, <www.buy.com/comp/default.asp>).

C.3.

"COMPAQ Savings from BUY.COM

[Depiction: A Compaq Presario 5304 computer system.]	System Price	\$869.00
	iSave Rebate	-\$400.00
	5304 Rebate	-\$200.00
	<u>Ground Shipping</u>	\$0.00
	Your Price	\$269.00!

Click Here To Buy

Complaint

[Hyperlink to: Purchase application]

Save a bundle...

when you combine the Compaq iSave \$400 Internet rebate
[Hyperlink to: Exhibit C.4.] with an additional \$200 cash back
[Hyperlink to: Rebate form] from Compaq.

Here's How It Works

1. Order your new Compaq system.
2. Sign up for three years of CompuServe2000 Internet service within 30 days of your purchase).
3. Fill out both the iSave \$400 Internet rebate form
[Hyperlink to: Exhibit C.4.] and the \$200 cash back form
[Hyperlink to: Rebate form] and mail to Compaq. See full details on rebate forms.

Here's What You Get. . ."

(Exhibit C.3., Page of respondent=s Web site devoted to Compaq Presario 5304 computer system package offer, <www.buy.com/comp/stores/compaq/600_promo.asp>)

C.4.

"\$400 Rebate (Mail-in Rebate) on the purchase of any Compaq Presario desktop PC and Compaq Monitor or Compaq Presario notebook PC, 7/25-10/9/99. Sign up for 3 years of Compuserve 2000 Premier Internet Service for \$21.95 a month. Mail-in-rebate must be postmarked by 11/30/99.

To redeem this rebate offer, simply:

1. **Purchase** an eligible Compaq product
2. **Sign** up for CompuServe 2000 service using your Compaq/CompuServe CD rebate kit
(**CD kits are available from your local authorized reseller**)
3. **Fill** in the form, then print it out; or **print** out the blank form, and fill it in by hand
4. **Mail** it to the address below with proof of purchase"

Complaint

[A fine print disclosure at the very bottom of this web page states:

"Terms and Conditions

\$400 Mail-In Rebate requires (1) purchase of any eligible Compaq Presario desktop & monitor or notebook computer, (2) contract commitment to a 3 year (36 months) subscription for CompuServe 2000 Internet Service at the monthly rate of \$21.95 or full prepayment of \$790.20 at the time of registration, (3) a completed mail-in rebate form, and (4) a dated purchase receipt with a copy of your receipt and UPC Code. All of the above must be completed and received by CompuServe within 30 days of purchase. Offer subject to your acceptance of CompuServe Terms of Service. If prepayment is not chosen, membership termination prior to 36 months requires pro-rated repayment of the rebate plus a \$50 cancellation fee, based on the following repayment schedule: Months 1-12/\$400, Months 13-24/\$300.00, and Months 25-36/\$200.00. Within 60 days of rebate approval, the rebate will be credited to your designated credit card or fulfilled by check sent to the name and address provided on the mail-in rebate form. Offer valid in the U.S. only for purchases through 10/9/99. You must be 18 years or older. Limit one per household. A major credit card is required. Premium CompuServe services carry surcharges, and communications surcharges may apply to AK and outside of the U.S. You may incur telephone charges, depending on your calling plan and location. Availability Access to CompuServe may be limited, especially during peak times."]

(Exhibit C.4., Page of respondent=s Web site containing the application form for the iSave \$400 Internet rebate, <www.buy.com/comp/stores/compaq/400_rebate_form.asp>. Consumers could purchase the Compaq Presario 5304 computer system without viewing this page.).

5. Through the means described in Paragraph 4, including but not necessarily limited to Exhibit A, respondent has represented,

Complaint

expressly or by implication, that the total cost of a Compaq Presario 5304 computer system is \$269.

Complaint

6. In truth and in fact, the total cost of a Compaq Presario 5304 computer system is not \$269. In order to obtain the Compaq Presario 5304 computer system for \$269, consumers are required to subscribe to CompuServe 2000 Internet service for 36 months at an additional cost of \$21.95 per month or a full pre-payment of \$790.20. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. In its advertisements, including but not limited to Exhibits A through C, for the Compaq Presario 5304 computer system respondent has represented that the total cost of the Compaq Presario 5304 computer system is \$269 after rebates. In these advertisements, respondent has failed to disclose or failed to disclose adequately:

(a) with respect to Exhibits A and C, that in order to obtain the Compaq Presario 5304 computer system for \$269, consumers are required to subscribe to CompuServe 2000 Internet service for 36 months at an additional cost of \$21.95 per month or a full pre-payment of \$790.20;

(b) with respect to Exhibits A and B, the amounts of the rebates, \$200 and \$400, and the total price of the computer system before rebates, \$869;

(c) that consumers who cancel the Internet service within 3 years must repay all or a portion of the \$400 rebate and pay a \$50 cancellation fee; and

(d) that CompuServe does not provide local access telephone numbers for its Internet service in all areas and, therefore that many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service.

Complaint Exhibits

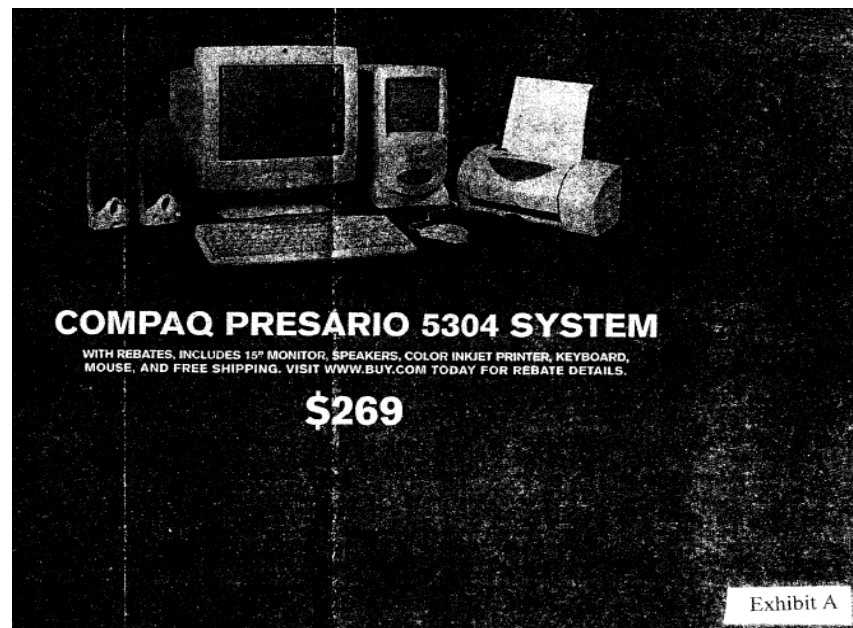
These facts would be material to consumers in their purchase or use of the product. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

8. 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.

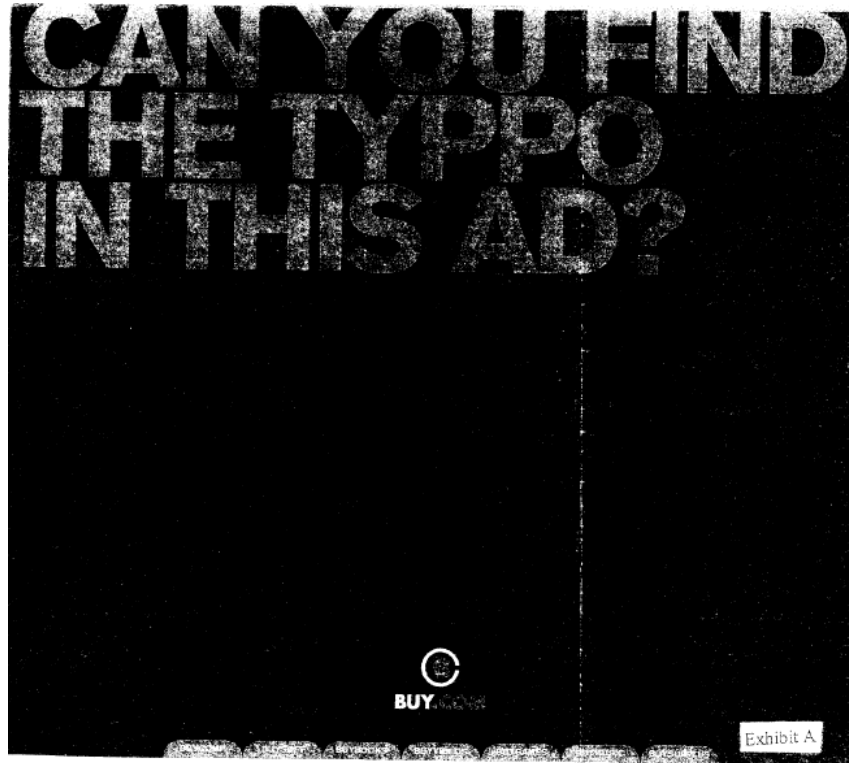
THEREFORE, the Federal Trade Commission this fifth day of September, 2000, has issued this complaint against respondent.

By the Commission.


Complaint Exhibits



Complaint Exhibits



Complaint Exhibits



COMPAQ PRESARIO 5304 SYSTEM
WITH REBATE, INCLUDES 18" MONITOR, SPEAKERS, COLOR INKJET PRINTER, KEYBOARD,
MOUSE, AND FREE SHIPPING. REQUIRES 36-MONTH COMPUSERV 3000 PREMIER INTERNET SERVICE
CONTRACT AT \$21.99 PER MONTH. VISIT WWW.BUY.COM TODAY FOR ALL THE REBATE DETAILS.

\$269*



BUY.COM

Exhibit B

BUYCOMP BUYBOOK BUYVIDEO BUYGAMES BUYMUSIC BUYSUPPLIES

Complaint Exhibits

HOME COMP SOFT BOOKS VIDEOS GAMES MUSIC SURPLUS

BUY.COM

Choose a Store: [Dropdown]
Choose Store & Enter Keywords: [Input]
[Search]

Now available on **etv**

Home | Feedback | eAccount | Order Tracking | Basket | Checkout

The Internet Superstore Sales / Support - 888.880.1030

Welcome back Ava, If you are not Ava [click here](#)
Going Back to School? Check out the great deals at our [Back to School Store](#).
Customer Feedback... [Click Here](#) to read what BUY.COM customers are saying.
The Lowest Prices On Earth and More...

BUYCOMP.COM
The Internet Computer Superstore
COMPAQ
\$269.00
FREE Ground Shipping
*After rebate
A Complete System \$269.00

BUYSOFT.COM
The Internet Software Superstore
Millennium 2K Solutions
Guaranteed Y2K fix!
Click Here For More Info & FREE Software Download
A Guaranteed Y2K Solution

BUYMUSIC.COM
The Internet Music Superstore
New Top 10
Coming Rock
Jazz Rap
R & B More...
Runaway Bride \$9.95

BUYBOOKS.COM
The Internet Book Superstore
NY Times Top 25
Non-Fiction Fiction
Audio History
Computer More...
How the Web Was Won \$18.95

BUYVIDEOS.COM
The Internet Video Superstore
DVDs Top 25
New Coming
Action Drama
Family More...
Matrix \$14.49

BUYGAMES.COM
The Internet Game Superstore
New Top 25
Nintendo Sony
Windows Dreamcast
Gameboy More...
NFL Blitz 2000 \$49.95

DVDs for \$14.99
A huge selection of DVDs for \$14.99 or less!

Top Selling CD's for \$9.95
Billboard's top 25 single disc CD's for \$9.95.

BuySurplus.com Store
Great prices on home electronics and computer products.

Customer Service
Need some help? Click here.

Join The BUY.COM Team
Employment Opportunities at BUY.COM.

More Info On Buy.Com
Press Releases, Company Info, Address...

Customer Service | FAQs | Site Guide | Company Info | Advertising | Terms | Help

Exhibit C.1

Complaint Exhibits

BUYCOMP.COM

Home | eAccount | eSale | eSearch | Order Tracking | Basket | Checkout

The Internet Computer Superstore

Welcome back Ava, If you are not Ava [click here](#)

COMPAQ **\$269***
includes: computer, monitor with speakers, and printer.
FREE Ground Shipping! Click Here Now!
*With rebates. Requires three year subscription to CompuServe internet service

BuyComp Great Buys [List All](#)

Compaq Presario 5340 \$696.00 [Buy Now](#) [Compare Price](#)
The AMD-K6-2 is the first processor to offer AMD's innovative 3DNow!™ technology, boosting overall performance and providing a superior 3D experience - at an affordable price.

3dfx Voodoo3 3000 AGP 16MB \$135.95 [Buy Now](#)
The 3dfx Voodoo3 3000 is the #1 video card for true game enthusiasts and generates 7 million triangles and 333 Megapixels per second at resolutions of up to 2,046 by 1536 pixels. See [Specials Page](#) for rebate details!

Linksys 10/100 PCMCIA Card \$57.95 [Buy Now](#) [Compare Price](#)
\$15.00 REBATE available! See [Specials Page](#). 10/100 Auto-Sensing ports. Supports both 100BaseTX and 10BaseT devices. Full duplex and Speed up to 200MBPS. Supports all major Operating Systems, including Linux! 3 year warranty and Free Tech Support.

SyncMaster 900P 19" \$349.95 [Buy Now](#) [Compare Price](#)

ZIP 100MB USB \$129.95 [Buy Now](#) [Compare Price](#)

24x/6x/4x CD TurboWriter \$202.95 [Buy Now](#) [Compare Price](#)

BuyComp Weekly Specials
Manufacturer Rebates, Cash Back Coupons...

Lowest Prices Guaranteed
We'll beat the computer hardware prices of our internet competitors. Guaranteed.

Shop By Brand
Manufacturer Stores, Iomega, Nokia...

Customer Service
Need some help? Click here.

Join The BUY.COM Team
Employment Opportunities at BUY.COM

More Info On Buy.Com
Press Releases, Company Info, Address...

Customer Service | FAQs | Site Guide | Company Info | Advertising | Terms | Help

Exhibit C.2

Complaint Exhibits

BUY.COM.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq/buy_promo.asp

HOME COMP SOFT BOOKS VIDEOS GAMES MUSIC SURPLUS

BUY.COM.COM

Quick Search or eSearch

SAVE \$975 on aspirin!

Choose Category: Computers Notebooks Software Printers Monitors Scanners Modems Memory Networks Video Cards Peripherals USB Devices Storage / Media Digital / Web Cams Power Protection Hand Held PDAs Macintosh Products

Home | eAccount | eLease | eSearch | Order Tracking | Basket | Checkout

\$269 Compaq System Sales / Support - 888.880.1030

COMPAQ Better answers

COMPAQ Savings from BUY.COM

\$269

System Price	\$869.00
iSave Rebate	-\$400.00
5304 Rebate	-\$200.00
Ground Shipping	\$0.00
Your Price	\$269.00!

[Click Here To Buy](#)

Save a bundle...
when you combine the Compaq iSave \$400 Internet rebate with an additional \$200 cash back from Compaq.

Here's How It Works

1. Order your new Compaq system.
2. Sign up for three years of CompuServe2000 Internet service within 30 days of your purchase.
3. Fill out both the iSave \$400 Internet rebate form and the \$200 cash back form and mail to Compaq. See full details on rebate forms.

Here's What You Get

Presario 5304 Computer

- M II 366 MMX Enhanced Processor
- 64MB Ram
- 4.3GB HD
- 56k Modem
- 32X CD

[BuySystem](#)

Presario MV520 Monitor

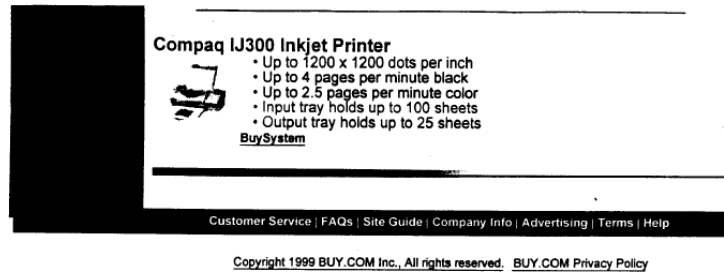
- High-quality 0.28mm Dot Pitch
- JBL Pro Amplified Speakers
- Max Res 1024x768
- 15" Monitor (13.8" Viewable)

[BuySystem](#)

Exhibit C.3

Complaint Exhibits

BUYCOMP.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq/600_promo.asp

Compaq IJ300 Inkjet Printer

- Up to 1200 x 1200 dots per inch
- Up to 4 pages per minute black
- Up to 2.5 pages per minute color
- Input tray holds up to 100 sheets
- Output tray holds up to 25 sheets

BuySystem

[Customer Service](#) | [FAQs](#) | [Site Guide](#) | [Company Info](#) | [Advertising](#) | [Terms](#) | [Help](#)

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Exhibit C.3

Complaint Exhibits

BUYCOMP.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq-400_rebate_form.asp

\$400 Rebate (Mail-in Rebate) on the purchase of any Compaq Presario desktop PC and Compaq Monitor or Compaq Presario notebook PC, 7/25 - 10/9/99. Sign up for 3 years of CompuServe 2000 Premier Internet service for \$21.95 a month. Mail-in rebate must be postmarked by 11/30/99.

To redeem this rebate offer, simply:

1. Purchase an eligible Compaq product
2. Sign up for CompuServe 2000 service using your Compaq/CompuServe CD rebate kit
(CD kits are available from your local authorized reseller)
3. Fill in the form, then print it out; or print out the blank form, and fill it in by hand
4. Mail it to the address below with proof of purchase

Compaq / CompuServe "ISAVE" Rebate Offer
PO Box 430800
El Paso, TX 88543-0800

\$400 Mail-in Rebate Form	
1. Credit Information:	
Credit Card #	<input type="text"/>
Expiration Date:	<input type="text"/> / <input type="text"/> / <input type="text"/>
(Check One)	
<input type="checkbox"/> MasterCard <input type="checkbox"/> American Express <input type="checkbox"/> Visa <input type="checkbox"/> Discover	
Bank name (MasterCard/Visa only):	<input type="text"/>
2. Compaq Presario PC Information:	
Retailer where you purchased your computer:	<input type="text"/>
PC Serial Number:	<input type="text"/>
PC Model #	<input type="text"/>
Monitor Serial Number (if applicable):	<input type="text"/>
Monitor Model #	<input type="text"/>
3. UPC Barcode Information:	
Provide the UPC barcode number from the outside of your computer:	<input type="text"/>
4. CompuServe 2000 Enrollment:	
Subscription program you wish to commit to (please check one) :	
<input type="checkbox"/> \$400.00 mail-in- rebate. 3-year Commitment to CS2000 at \$21.95 per month.	
OR	
<input type="checkbox"/> \$400.00 Mail-In-Rebate. Prepayment of \$790.20 for 3 Year Membership of CompuServe 2000 (36 months @ \$21.95 per month)	

Exhibit C.4

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 130

Complaint Exhibits

BU _OMP.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq_400_rebate_form.asp**5. CompuServe 2000 Screen Name:**

Please complete the following section AFTER setting up your new Compaq Presario computer and establishing your CompuServe 2000 account:

CompuServe 2000 Screen Name:

(your Screen Name will also be your e-mail address, for example: if your screen name is "bjones", then your e-mail address is "bjones@cs.com".)

6. Other:

(optional) Do you plan to cancel your existing Internet service to replace with CompuServe?

☐ Yes ☐ No

If yes to above, which Internet service will you replace?

☐ I don't have an existing Internet service subscription.

I agree to allow CompuServe to charge my credit card based on the rebate plan chosen above. I also agree to abide by the terms and conditions of the CompuServe subscription agreement.

PC and monitor do not have to be purchased at the same time. The rebate must be postmarked by 11/30/99 and received by 12/8/99.

Name
Address
City ST (US ONLY)
ZIP
Phone
E-mail Address

Terms and Conditions

\$400 Mail-In Rebate requires (1) purchase of any eligible Compaq Presario desktop & monitor or notebook computer (2) contract commitment to a 3 year (36 months) subscription for CompuServe 2000 Internet Service at the monthly rate of \$21.95 or full prepayment of \$790.20 at the time of registration, (3) a completed mail-in rebate form, and (4) a dated purchase receipt with a copy of your receipt and UPC code. All of the above must be completed and received by CompuServe within 30 days of purchase. Offer subject to your acceptance of CompuServe Terms of Service. If prepayment is not chosen, membership termination prior to 36 months requires pro-rated repayment of the rebate plus a \$50 cancellation fee, based on the following repayment schedule: Months 1-12/\$400, Months 13-24/\$300.00, and Months 25-36/\$200.00. Within 60 days of rebate approval, the rebate will be credited to your designated credit card or fulfilled by check sent to the name and address provided on the mail-in rebate form. Offer valid in the U.S. only for purchases through 10/9/99. You must be 18 years or older. Limit one per household. A major credit card is required. Premium CompuServe services carry surcharges, and communications surcharges may apply to AK and outside of the U.S. You may incur telephone charges, depending on your calling plan and location. Availability Access to CompuServe may be limited, especially during peak times.

Exhibit C.4

Decision and Order

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 Bureau of Consumer Protection 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, its attorney, and counsel for the Federal Trade 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 received, 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 BUY.COM Inc. is a Delaware corporation with its principal office or place of business at 85 Enterprise, Aliso Viejo, California 92656.

Decision and Order

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. ARebate@ shall mean cash, instant savings, instant credit, credit towards future purchases, merchandise, services, or any other consideration offered to consumers who purchase products or services from respondent, which is provided at the time of purchase, or subsequent to the purchase.
2. Unless otherwise specified, Arespondent@ shall mean BUY.COM Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. AClearly 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.

Decision and Order

- B. In a print advertisement, promotional material, 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.

4. In the case of advertisements disseminated by means of an interactive electronic medium such as software, the Internet or online services:

(i) 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;

(ii) a disclosure made A 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.

Decision and Order

5. ACommerce@ 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the price or cost to consumers of such product or service.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of any such computer, computer-related product or Internet access service when that price, cost, or any rebate is conditioned upon the purchase of any other product or service, unless it discloses clearly and conspicuously, and in close proximity to the representation that consumers must purchase the other product or service in order to obtain the represented price or rebate and the cost of the other product or service, including if a service, the length of time that consumers are required to purchase the service.

Provided, that for purposes of this Part, use of the term Arebate@ or Adiscount,@ without any description or characterization of either term shall not, in and of itself, be deemed a representation about the price or cost to consumers of a product or service.

Decision and Order

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the after-rebate cost of such product or service, unless it discloses, clearly and conspicuously, and in close proximity to the representation, the amounts of any and all rebates offered and the total price or cost to consumers of the product or service, excluding any and all rebate amounts (i.e., the before-rebate price).

Provided, however, if (1) the offer involves only one rebate and no other reductions in the total price of such product or service, and (2) respondent discloses the amount of that rebate as prescribed above, then respondent need not disclose the before-rebate price or cost of such product or service.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any Internet access service; or any computer or computer-related product for which the price, cost or any rebate is conditioned upon the purchase of Internet access service; in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of such Internet access service, unless it discloses, clearly and conspicuously:

- A. the dollar amounts of any and all fees, charges, rebate repayments, and other costs consumers are required to pay to cancel the Internet access service; and

Decision and Order

- B. (1) that consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone service charges to access the Internet service, if that is the case; and (2) a means for each consumer to ascertain whether he or she would incur such costs or charges to access the Internet service and the amount of any such costs or charges. Provided that respondent may comply with Part IV.B.(2), above, by disclosing a means by which consumers may obtain information from the Internet service provider about available access phone numbers and the amount of any hourly surcharges or other costs to access the Internet service; and by advising consumers to contact their local telephone company to determine whether using the access telephone number closest to them will incur charges in excess of local service charges.

Provided that in the case of advertisements disseminated through an interactive electronic medium, such as software, the Internet or other online services, respondent may make the disclosures required by this Part through the use of a hyperlink. In addition,

1. for Part IV.A, above, any such hyperlink must be labeled:
AEarly Cancellation of the Internet Service Will Result in Substantial Penalties. Click Here.®;
2. for Part IV.B, above, any such hyperlink must be labeled:
AYou May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here.®

V.

IT IS FURTHER ORDERED that respondent BUY.COM 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 request make available to the Federal Trade Commission for inspection and copying:

Decision and Order

- A. All advertisements and promotional materials containing the representation;

Provided however, that in the case of advertisements and promotional materials disseminated by means of an interactive electronic medium, respondent and its successors and assigns may comply with this provision by maintaining and making available all advertisements and promotional materials for computer or computer-related products or services for which the price, cost or any rebate is conditioned upon the purchase of Internet access service; but, multiple versions of advertisements and promotional materials need not be maintained or submitted, if they differ only in terms of the prices of the products or services being offered;

- B. All materials that were relied upon in complying with this Order; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their 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.

VI.

IT IS FURTHER ORDERED that respondent BUY.COM Inc. and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent 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.

Decision and Order

VII.

IT IS FURTHER ORDERED that respondent BUY.COM 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. 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent BUY.COM Inc. and its successors and assigns shall, within sixty (60) days after 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 they have complied with this order.

IX.

This order will terminate on September 5, 2020, 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:

Analysis to Aid Public Comment

- 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.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from BUY.COM Inc. (Arespondent@).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Analysis to Aid Public Comment

Respondent advertises, sells, and distributes books, music and video recordings, personal electronic devices, computer software, personal computers and other products through its Internet Website, www.buy.com. This matter concerns allegedly false and deceptive advertising claims regarding the sale of a \$269 Compaq Presario 5304 computer system based upon a \$400 rebate that required consumers to enter into a three year contract for Internet service.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Compaq Presario 5304 computer system was \$269. In fact, in order to obtain the computer system for \$269, consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of \$21.95 per month or a full payment of \$790.20. The complaint also alleges that in representing that the total cost of the computer system was \$269, respondent failed to disclose or failed to disclose adequately: (a) that consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of \$21.95 per month or a total cost of \$790.20; (b) the amounts of the rebates, \$200 and \$400, and the total price of the computer system before rebates, \$869; (c) that consumers who cancel the Internet service within three years must repay all or a portion of the \$400 rebate and pay a \$50 cancellation fee; and (d) that CompuServe does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service.

Analysis to Aid Public Comment

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased. Furthermore, if the advertised product or service is sold together with a service, respondent is also required to disclose the length of time that consumers are required to purchase that service. Part II also contains a proviso that permits respondent to use the terms Arebate@ or Adiscount@ without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (i.e., the before-rebate price). Part III also contains a proviso that states that if there is only one rebate involved in the offer, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

Part IV of the proposed order prohibits the respondent from making any representation about the price or cost of any Internet access service it offers for sale, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may

Analysis to Aid Public Comment

have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of Athrough the use of a hyperlink,@ provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is, itself, clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclose information about Internet cancellation terms, it must be labeled as follows: AEarly Cancellation of the Internet Service Will Result in Substantial Penalties. Click Here.@ Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: AYou May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here.@

Part V of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

Part VI of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Analysis to Aid Public Comment

Part VII of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VIII of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part IX of the proposed order is a sunset provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

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