

IN THE MATTER OF

NEC HOME ELECTRONICS (U.S.A.), INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3229. Complaint, May 11, 1988—Decision, May 11, 1988

This consent order requires, among other things, a Delaware computer corporation, with its principal office in Wood Dale, Ill., to provide consumer redress and to contact each consumer who purchased a 32K board. The consent order also prohibits the respondent from falsely claiming that any of its computer hardware products currently has a stated memory capacity or other capability and from claiming that purchasers of its products have access to a stated memory capacity or other capability, unless the respondent has substantiation for the claim.

Appearances

For the Commission: *Jock K. Chung.*

For the respondent: *William Blumenthal and D.E. Rosenthal, Sutherland, Asbill & Brennan, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that NEC Home Electronics (U.S.A.), Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. For the purposes of this complaint, the following definition shall apply:

1. "RAM" means random access memory, and refers to the memory capacity of a computer. RAM is measured in small, basic units of storage or memory called "bytes" or in K bytes (K = 1024 bytes).

PAR. 2. NEC Home Electronics (U.S.A.), Inc., is a Delaware corporation with its principal office or place of business at 1255 Michael Drive, Wood Dale, Illinois.

PAR. 3. Respondent imports, advertises, offers for sale and sells computer hardware and software products and accessories, including the NEC PC-8000 Series microcomputer system.

PAR. 4. From 1981 to 1984, respondent imported, advertised, offered for sale, sold and distributed the NEC PC-8001A microcomputer, the NEC PC-8012A input/output ("I/O") Unit and PC-8012A-02 32K

RAM memory boards as accessories to the I/O Units. During the above time period, respondent distributed and sold said microcomputer, I/O unit, and memory boards, as well as other PC-8000 Series accessories and related equipment, from its principal place of business to distributors, retailers and, ultimately, purchasers located in various states of the United States.

PAR. 5. Respondent maintains, and has maintained, a substantial course of business, including the acts and practices set forth herein, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 6. In connection with the marketing of computer products, respondent has disseminated and now disseminates advertisements and promotional material for the purpose of promoting the sale of its products.

PAR. 7. Typical statements in said advertisements and promotional materials, but not necessarily inclusive thereof, are found in the promotional materials attached hereto as Exhibits A and B. Among other things, these promotional materials contain the following unqualified descriptions of the RAM capacity for the PC-8001A microcomputer and the PC-8012A I/O Unit:

(a) PC-8001A: "RAM - 32K Bytes (expandable to 160K Bytes with PC-8012A I/O Unit);" and

(b) PC-8012A I/O Unit: "32K RAM (expandable to 128K with additional boards)."

PAR. 8. Through the use of the statements referred to in paragraph seven and others, respondent has represented, directly or by implication, that the average person, without any special expertise, could expand the memory capacity (RAM) of the PC-8001A microcomputer from 32K bytes to 160K bytes with the addition of the PC-8012A I/O Unit and memory boards.

PAR. 9. In truth and in fact, at the time of the dissemination of the foregoing representation, the average person, without any special expertise, could not expand the memory capacity (RAM) of the PC-8001A microcomputer from 32K bytes to 160K bytes with the addition of the PC-8012A I/O Unit and memory boards, because only a person who was a computer programmer or who had access to a sophisticated software operating system, which has never been made available for sale in the United States, could accomplish this expansion. Therefore, the representation referred to in paragraph eight was and is false and misleading.

PAR. 10. The acts and practices of respondent as alleged in this complaint constitute unfair and deceptive acts or practices in or af-

501

Complaint

fecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

EXHIBIT A

Specifications**PC-8001A Microcomputer**

		N-BASIC Language Highlights	
CPU	μ PD780C-1 (Z-80A compatible), 4MHz	Number systems	Integer, floating-point octal and hexadecimal
ROM	24K Bytes	Significant figures	16 digits maximum
RAM	32K Bytes (expandable to 160K Bytes with PC-8012A I/O Unit.	Line numbering	Zero to 65529
CRT	Keyboard selectable 80 characters x 20 or 25 lines 72 characters x 20 or 25 lines 40 characters x 20 or 25 lines 36 characters x 20 or 25 lines 248-symbol character set. Includes complete English upper and lower case, complete ASCII, numerous Greek characters and graphics patterns Graphic function: 160 x 100 matrix Color: 8-colors. Black, blue, red, magenta, green, cyan, yellow, white. Other functions: Reverse, blink, secret	Multi-statements	Included
Cassette Interface	FSK system (1200, 2400 Hz), 600 baud	Direct execution	Included
Printer Interface	Standard Centronics included	Variable names	Start with English letter, followed by any combination or length of English letters or numerals. Only the first two characters are significant.
Keyboard	English upper/lower case characters, numeric keypad, control keys, screen editing function keys, and five programmable function keys	Arrays	255 dimensions. Suffix from zero to 65535, limited by available memory.
Serial Interface	Built-in TTL-level serial port, 4800/2400/1200/600/300 baud. (Refer to user's manual for actual character transfer speed in terminal mode.)	Graphic functions	Draw lines and boxes. "GET @" stores graphics from screen into an array. "PUT @" places graphics from an array onto the screen.
Power Supply	AC 120V $\pm$ 10%, 60Hz	Color function	Included (text and graphics)
Dimensions	430mm (16.9") width x 260mm (10.2") depth x 80mm (3.1") height	Access to I/O, memory	Included (F*EK, POKE, OUT, INP)
Weight	Approximately 4Kg (8.8 lbs.)	Formatted output	Included (PRINT USING statement)
		IF-THEN-ELSE	Included
		Editing function	Screen editing from keyboard
		Machine word monitor	Included
		Terminal mode	Included (ASCII)
		Disk file	Possible in both sequential and random access modes

NEC

NEC America, Inc.
1401 Estes Avenue
Bloomington, IL 61702

501

Complaint

EXHIBIT B

Specifications**PC-8012A I/O unit**

The PC-8012A I/O unit is designed to expand the memory capacity of the PC-8001A microcomputer, and to accommodate interfaces and peripherals.

ROM	2K PROM area (chips are optional)
RAM	32K RAM (expandable to 128K with additional boards)
FDC I/O port	(direct connection for the PC-8031A disk drive)
Interrupt control circuitry	8 priority levels implemented, 16 possible. (Real-time interrupt generating capability)
Expansion	7 slots available for expansion boards
Power supply	115v AC $\pm 10\%$, 60Hz
Power consumption	15w (for rated load)
Operating temperature	0°C-35°C (32°F-95°F)
Operating humidity	20%-80% (with no condensation)
Storage temperature	-15°C-60°C (5°F-140°F)
Dimensions	430mm (17½") width x 320mm (12½") depth x 150mm (6") height
Weight	7 kg (15½ lbs.)

NEC
NEC America, Inc.
1401 Estes Avenue

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 attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent NEC Home Electronics (U.S.A.), Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 1255 Michael Drive, in the City of Wood Dale, State of Illinois.

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

1. For the purposes of this order, all references to the "memory capacity" of a computer product shall include both its random access memory ("RAM") and its read only memory ("ROM").

I.

It is ordered, That respondent NEC Home Electronics (U.S.A.), Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the importation, manufacture, advertising, offering for sale, sale, or distribution of the PC-8000 Series microcomputer system, or any other computer hardware product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

a. That any such product has a stated memory capacity, or has any other directly related capacity or capability, unless such representation is true.

b. That it is possible for a purchaser of any of respondent's products to use or access any stated capacity or capability or perform any stated directly related function, unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis for such representation.

c. That any such product will, in the future, have a stated memory capacity, or any other directly related capacity or capability, unless at the time such representation is made respondent possesses and relies upon a reasonable basis for said representation.

II.

It is further ordered, That:

a) Within ninety (90) days of the date of service on respondent of this order, respondent shall compile from its own records and those of its current and past distributors, dealerships and users' groups a current, up-to-date mailing list of each customer who purchased a PC-8012A-02 32K RAM Board(s) during the time period January 1, 1981 to December 31, 1984. If respondent does not possess or have access to the required customer records, then it shall, within a reasonable period of time, mail a letter to each current and past distributor or dealership and each company-sanctioned NECHE users' group at their present or last known business address requesting these records and shall compile a mailing list of retail customers based on the information received.

b) Within thirty (30) days of compiling the mailing list mentioned above, respondent shall send by first class mail to each customer named on the mailing list compiled in accordance with the requirements of paragraph II.a), above, a dated letter, plus an enclosed post-

card, in the form prescribed in Appendix A to this order. The letter shall bear the customer's name and address, as identified on the mailing list, and no information other than that required by this paragraph shall be included in or added to the letter or postcard, nor shall any other material be transmitted with the letter or postcard without the express written approval of Commission staff. In addition, the envelope shall state the customer's name and address and shall include the following statement, printed clearly and conspicuously in the lower, left-hand corner of the envelope: **IMPORTANT INFORMATION INSIDE: REFUND OFFER**

The required postcard shall be in the form and approximate same size as the one prescribed in Appendix A to this order. The postcard shall be postage-paid and contain respondent's address.

In the event that any of the above-mentioned letters are returned due to the inability of the post office to deliver or forward to the addressee, the respondent is ordered to compile a list of the names of all these addresses. If the respondent receives a 32K RAM board refund request from any customer whose name was on the mailing list but whose letter was returned as undelivered by the Post Office, then the respondent is ordered to complete a new mailing, in accordance with the provisions of this order, to the return address shown on the customer's purchase order or other correspondence. Respondent's obligation under this paragraph to complete a new mailing shall expire one year after service upon respondent of this order.

Pursuant to the requirements contained in the letter attached as Appendix A, and subject to any limitations listed below, respondent shall offer each customer named in the above-mentioned mailing list the following:

1. Respondent will remit to each customer who purchased PC-8012A-02 32K RAM board(s), a check calculated according to the following formula: If refund requests to NECHE for less than 100 RAM boards are made, then the customer will be given \$150 per RAM board. If refund requests for more than 100 RAM boards are made, then the amount to be refunded will be calculated as follows:

$$\frac{\$15,000}{\begin{array}{l} \text{number of RAM board} \\ \text{refund requests} \\ \text{received within one} \\ \text{year of service of} \\ \text{this order} \end{array}} = \text{amount of refund per RAM board}$$

2. Respondent shall send out all checks within thirteen (13) months after service upon respondent of this order. For each customer whose

initial mailing was returned by the post office, but to whom respondent makes a subsequent mailing within one year after service upon respondent of this order, the redress check must be sent within thirty (30) days of respondent's receipt of the return postcard sent to that customer.

III.

It is further ordered, That respondent, its successors and assigns shall maintain accurate records of all materials that were relied upon by respondent in disseminating any representation covered by this order, as well as all materials and information used or relied upon in performing the redress obligations under Part II. of this order. With regard to the records used in performing the redress obligations, said records shall be retained for three years after service upon respondent of this order. With regard to the records relied upon in disseminating any representation covered by this order, such records shall be retained for three years from the date of respondent's last use of such representation. All of the above-mentioned records shall be made available to the Commission upon reasonable notice for inspection and copying.

IV.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

V.

It is further ordered, That respondent shall distribute a copy of this order to each of its operating divisions.

VI.

It is further ordered, That respondent shall, within one hundred and twenty (120) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with all requirements of this order except paragraph II hereof. On or before eighteen months after service upon respondent of this order, respondent shall file with the Commission

a report, in writing, setting forth in detail the manner and form of its compliance with paragraph II of this order, said report to include, among other things, the number of purchasers to whom refund notices were delivered, the number of purchasers to whom refund checks were mailed, and the amount of each such refund check.

IN THE MATTER OF
SUN INDUSTRIES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 &
12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3230. Complaint, May 13, 1988—Decision, May 13, 1988

This consent order prohibits, among other things, a Jonesboro, AR., manufacturer and seller of tanning devices and related products from misrepresenting that the use of a tanning device does not pose a risk of any harmful side effects to users. The consent order also requires the respondent to include a warning statement in any advertisements or promotional materials used for its tanning devices.

Appearances

For the Commission: *Brinley H. Williams and Toby M. Levin.*

For the respondent: *Ray A. Goodwin, Goodwin, Hamilton & Moore,*
Paragould, AR.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sun Industries, Inc., a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is an Arkansas corporation, with its office and principal place of business located at 2409 Industrial Drive, P.O. Box 2026, Jonesboro, Arkansas.

PAR. 2. Respondent has manufactured, advertised, offered for sale, sold and distributed tanning devices and related products for the artificial tanning of humans, including tanning beds, facial units, overhead lamp systems, and other products to the public. These tanning devices are marketed under such trade names as SunTana Sun-System.

PAR. 3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated and caused the dissemination of advertisements and promotional materials for its tanning devices published in magazines and broadcasted on television across state lines, and disseminated in product brochures and other sales literature directly to consumers or to distributors for display or distribution