

IN THE MATTER OF
GATEWAY 2000, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3844. Complaint, Dec. 22, 1998--Decision, Dec. 22, 1998

This consent order prohibits, among other things, the South Dakota-based distributor and advertiser, of personal computers and software, from failing to make the text of any written warranty on a consumer product readily available for examination by prospective buyers prior to sale; from failing to provide a full refund of the purchase price of a product, including any shipping costs, insurance, handling or any other fees due to the consumer pursuant to any money-back guarantee offer made by the respondent; and requires the respondent to pay approximately \$290,000 to the U.S. Treasury.

Participants

For the Commission: *Michael Rose, Brenda Doubrava, John Mendenhall, and Margaret Patterson.*

For the respondent: *Michael Sibarium, Winston & Strawn, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act ("the Warranty Act"), 15 U.S.C. 2301 *et seq.*, and Rules 701 and 702, 16 CFR Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gateway 2000, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Rules, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rules 701 and 702, 16 CFR 701.1 and 702, promulgated thereunder shall apply to the terms used in this complaint.

PAR. 2. Respondent Gateway 2000, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 610 Gateway Drive, North Sioux City, SD.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. Respondent is now and has been engaged in the direct marketing of personal computers throughout the United States. In the operation of its business, respondent is now and has been distributing, advertising, offering for sale and selling, among other items, IBM-compatible desktop, notebook and subnotebook personal computers, software, printers, modems, and monitors, all of which are consumer products. Therefore, respondent is a supplier of consumer products.

PAR. 5. In the ordinary course and conduct of its aforesaid business, respondent sells or offers for sale consumer products for purposes other than resale or use in the ordinary course of the buyer's business. Therefore, respondent is a seller of consumer products.

VIOLATIONS OF SECTION 5(a)(1) OF THE FTC ACT

PAR. 6. Respondent has disseminated or has caused to be disseminated advertisements, promotional materials and written warranties for its products, including but not necessarily limited to the attached Exhibits 1 through 9.

Money-back Guarantee Claims

PAR. 7. The advertisements and promotional materials referred to in paragraph six, including but not necessarily limited to the attached Exhibits 2 through 6, contain the following statements:

1. GATEWAY 2000'S STANDARD FEATURES AND SERVICES . . .
GUARANTEE Thirty-day money back guarantee.
2. 30-Day Money-back Guarantee . . . If you're unhappy with your Gateway 2000 purchase, for any reason, you can return the system within 30 days for a full refund.
3. THE EXTRAS - THAT DON'T COST EXTRA AT GATEWAY . . .
30-day money-back guarantee.
4. INCLUDED WITH EVERY SYSTEM: 30-day money-back guarantee.
5. You get a **30-day money-back guarantee**. If you don't like your system, send it back within 30 days for a refund.

PAR. 8. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph seven, and other statements not specifically set forth herein, respondent has represented, directly or by implication, that purchasers may return merchandise to the respondent within 30 days of its purchase, and obtain a full refund of all money paid to respondent to obtain said merchandise.

PAR. 9. In truth and in fact, when respondent determines the amount of the refund, it is its policy and practice to deduct its stated cost of shipping the merchandise to the purchaser from the money paid by consumers to the respondent. Thus, purchasers who return merchandise to respondent within 30 days of its purchase do not obtain a full refund of all money paid to respondent to obtain said merchandise.

PAR. 10. Therefore, the representations set forth in paragraph eight were, and are, false and misleading and constitute unfair or deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

On-Site Service Claims

PAR. 11. The advertisements and promotional materials referred to in paragraph six, including but not necessarily limited to the attached Exhibits 7, 8 and 9, contain the following statements:

Standard Features and Services -- Free on-site service to most locations in the nation

THE EXTRAS That Don't Cost Extra At Gateway -- Free on-site service to most locations

INCLUDED WITH EVERY SYSTEM: Free on-site service to most locations

PAR. 12. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph eleven, and other statements not specifically set forth herein, respondent has represented, directly or by implication, that the purchasers of the warranted products, upon request to the respondent, will receive the free on-site services of a technician, except in certain geographic locations, and that respondent will send a technician regardless of whether respondent first diagnoses the problem over the telephone and whether the consumer can make the repair.

PAR. 13. In truth and in fact, regardless of geographic location, purchasers of the warranted products, upon request to respondent, did

not always receive the free on-site services of a technician; rather, it was the policy and practice of the respondent that it did not send a technician to provide on-site service until the respondent diagnosed the problem over the telephone and determined that the consumer could not make the repair.

PAR. 14. Therefore, the representations set forth in paragraph twelve were, and are, misleading and constitute unfair or deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

Deceptive Warranty Language About Consumer Remedies

PAR. 15. In the ordinary course and conduct of its business, respondent has disseminated or has caused to be disseminated written warranties, including but not necessarily limited to the attached Exhibit 1, which contain the following language:

Under no circumstances shall Gateway 2000 be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict liability, or any other legal theory . . .

PAR. 16. Through the use of the statement referred to in paragraph fifteen, and other statements not specifically set forth herein, respondent has represented, directly or by implication, that consumers have no remedies regarding claims based upon incidental or consequential damages.

PAR. 17. In truth and in fact, some states do not allow the exclusion or limitation of incidental or consequential damages, and consumers in those states do have remedies regarding claims based upon incidental or consequential damages.

PAR. 18. Therefore, the representations set forth in paragraph sixteen were, and are, false and misleading and constitute unfair or deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

VIOLATIONS OF THE PRE-SALE AVAILABILITY RULE

PAR. 19. In the ordinary course and conduct of its business as a seller of consumer products, respondent has offered for sale to consumers consumer products with written warranties by means of a

1. The full text of the written warranty; or
2. That the written warranty can be obtained free upon specific written request, and the address where such warranty can be obtained.

PAR. 20. Section 110(b) of the Warranty Act mandates that the failure to comply with a Rule promulgated under the Warranty Act is a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). 15 U.S.C. 2310(b). Therefore, Gateway's failure to comply with the provisions of the Pre-Sale Availability Rule, 16 CFR Part 702, constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

VIOLATIONS OF THE DISCLOSURE RULE

PAR. 21. In the ordinary course and conduct of its business, respondent has given or offered to give written warranties, and is therefore a warrantor as that term is defined in Section 701.1(g) of the Disclosure Rule, 16 CFR 701.1(g).

PAR. 22. In the ordinary course and conduct of its business, respondent has provided written warranties excluding incidental or consequential damages, but has failed to make, as required by Section 701.3(a)(8) of the Disclosure Rule, 16 CFR 701.3(a)(8), the following disclosure: "Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you."

PAR. 23. In the ordinary course and conduct of its business, respondent has provided written warranties but has failed to make, as required by Section 701.3(a)(9) of the Disclosure Rule, 16 CFR 701.3(a)(9), the following disclosure: "This warranty gives you specific legal rights, and you may also have other rights which vary from State to State."

PAR. 24. Section 110(b) of the Warranty Act mandates that the failure to comply with a Rule promulgated under the Warranty Act is a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1). 15 U.S.C. 2310(b). Therefore, Gateway's failure to comply with the provisions of the Disclosure Rule, 16 CFR 701, constituted and now constitutes an unfair or deceptive act or practice

888

Complaint

in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

VIOLATIONS OF THE WARRANTY ACT

PAR. 25. Section 108 of the Warranty Act provides that no supplier may disclaim or modify any implied warranty, except by limiting the duration of an implied warranty to the duration of a written warranty of reasonable duration, if the supplier makes any written warranty to the consumer with respect to a consumer product. 15 U.S.C. 2308.

PAR. 26. In the ordinary course and conduct of its business as a supplier, respondent has made written warranties, including but not necessarily limited to the attached Exhibit 1, which contain the following language:

DISCLAIMER OF WARRANTIES

THE WARRANTY STATED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THIS PRODUCT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), ARE HEREBY DISCLAIMED . . .

PAR. 27. Respondent's disclaimer of implied warranties constituted and now constitutes a violation of Section 108 of the Warranty Act, 15 U.S.C. 2308, and, pursuant to Section 110(b) thereof, 15 U.S.C. 2310(b), an unfair or deceptive act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

Commissioner Anthony recused.

EXHIBIT 1

Gateway 2000 Limited Warranty



Gateway 2000 One-Year Limited Warranty

Gateway 2000, Inc. warrants to the original purchaser that this hardware system will be free from defects in material and/or workmanship for one (1) year from the date of delivery. During the warranty period, Gateway 2000 will correct any defects in material or workmanship, or any failure of the system to conform to specifications, at no charge for labor and materials. Any replacement parts are warranted for the remainder of the original warranty or thirty (30) days, whichever is longer. The warranty period is not extended as a result of purchasing any additional parts from us or upgrading your Gateway 2000 computer. The original owner must promptly notify Gateway 2000, Inc. in writing if there is a defect in material or workmanship. Written notice in all events must be received by Gateway 2000 before expiration of the warranty period. This warranty is not transferable.

International Warranty

The Warranty for international customers is the same as for customers within the United States, with the following exceptions: On all orders for replacement parts, the customer must pay for the parts and shipping costs before the parts are shipped. When the defective parts are returned to Gateway 2000, Gateway 2000 will refund the cost of the parts — shipping charges are not refundable. Gateway 2000 is also not responsible for any customs fees, taxes or VAT that may be due. You must pay all customs fees, taxes, or VAT that may be due.

This One-Year Limited Warranty covers normal use. Gateway 2000 does not warrant or cover:

- 1) damage during shipment other than original shipment to purchaser;
- 1) damage caused by a disaster such as fire, flood, wind, earthquake, or lightning;
- 1) damage caused by unauthorized attachments, alterations, modifications or foreign objects;
- 1) damage caused by peripherals;
- 1) defects caused by failure to provide a suitable installation environment for the hardware system;
- 1) damage caused by the use of the hardware system for purposes other than those for which it was designed;
- 1) damage from improper maintenance;
- 1) damage caused by any other abuse, misuse, mishandling, or misapplication.

Gateway 2000's liability for failure to repair the hardware system to conform to the warranty after a reasonable number of attempts will be limited to a replacement of the hardware system or, at Gateway 2000's option, to a refund not to exceed the purchase price of the hardware system. These remedies are the Purchaser's exclusive remedies for breach of warranty.

Under no circumstances shall Gateway 2000 be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict liability, or any other legal theory. Such damages include, but are not limited to, loss of profits, loss of revenue, loss of use of the hardware system or any associated equipment, cost of capital, cost of substitute or replacement equipment, facilities or services, down time, purchaser's time, the claims of third parties, including customers, and injury to property.

DISCLAIMER OF WARRANTIES

THE WARRANTY STATED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THIS PRODUCT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), ARE HEREBY DISCLAIMED. NO ORAL OR WRITTEN INFORMATION (INCLUDING BUT NOT LIMITED TO THE 90-DAY MONEY BACK GUARANTEE, OR ADVICE GIVEN BY GATEWAY 2000, ITS AGENTS OR EMPLOYEES) SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

THIS DISCLAIMER OF WARRANTIES AND LIMITED WARRANTY ARE GOVERNED BY THE LAWS OF THE STATE OF SOUTH DAKOTA.

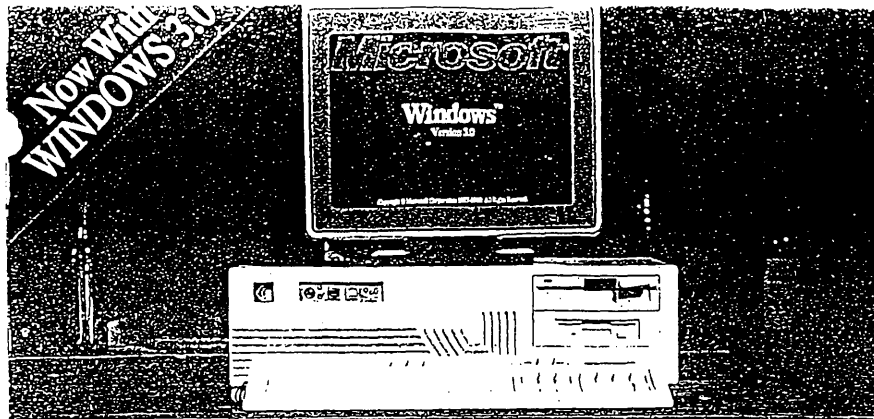
6 Gateway 2000 Customer Support Guide

396

EXHIBIT 1

EXHIBIT 2

Now With WINDOWS 3.0



GATEWAY 2000'S STANDARD FEATURES AND SERVICES

TWO DISKETTE DRIVES Gateway 2000 machines come standard with both a 5.25" 1.2 Meg Floppy Drive and a 3.5" 1.44 Meg Diskette Drive. AMPLE HARD DISK SPACE Our systems come standard with high capacity/high speed hard disk drives and controllers. TWO MEGS RAM—MINIMUM Gateway 2000 systems are loaded with RAM—2 Megs standard for 286 and 386SX systems, and 4 Megs standard for 386 and 486 machines. HIGH RES COLOR GRAPHICS All Gateway 2000 systems come with a standard 1024x768 VGA display. CUSTOM CONFIGURATIONS If our standard configurations don't fit your needs, we'll be happy to custom configure a system just for you.	GUARANTEE Thirty-day money back guarantee. WARRANTY All Gateway 2000 systems come with a one-year warranty on parts and labor. TECHNICAL SUPPORT For the life of your machine, you can call our technical support staff toll-free for expert assistance. OVERNIGHT PARTS If a part must be replaced, you'll have it overnight via Federal Express free of charge. BULLETIN BOARD Gateway 2000 owners have access to bulletin board technical support. FREE ON-SITE SERVICE If unusual difficulties arise, we provide free on-site service to most locations in the country.
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GATEWAY2000
You've got a friend in the business.

800-523-2000

610 Gateway Drive • North Sioux City, South Dakota 57049 • Telephone 605-232-2000 • Fax 605-232-2023

EXHIBIT 2

92

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126 F.T.C.

EXHIBIT 3

Gateway 2000 Assurances

Like most companies, Gateway 2000 offers a good written warranty and warranty on all products. Unlike most companies, we treat our customers as individuals, taking special care to see that your individual situation is handled fairly. Your satisfaction is our number one priority.

30-Day Money-Back Guarantee

If you're unhappy with your Gateway 2000 purchase, for any reason, you can return the system within 30 days for a full refund.

One-Year Warranty

Every Gateway 2000 system comes with a one-year warranty on parts and service. If a part needs to be replaced, we'll quickly send a replacement part via overnight shipping free of charge. Beyond the warranty, we provide free telephone technical support for the life of your machine.

Free On-Site Service

If unusual difficulties occur, we can provide free on-site service to most locations in the country.

Credit Terms

You can purchase your Gateway 2000 system on C.O.D. terms or with American Express, Discover, Visa, or Mastercard. Net 30-day credit terms and leasing options are also available to qualified buyers.

New FCC and Product Development Labs

As an added assurance to you that your Gateway 2000 system will comply with all FCC certification requirements, we've just installed a new FCC testing lab in our recently expanded 70,000 square-foot manufacturing facility. We've also expanded our product development lab in which we are continually testing new components. The quest for even better price/performance computer systems never ends at Gateway.

New Sales Hours

For your convenience, we've expanded our sales hours. New sales hours are from 7 a.m. to 10 p.m. (CST) Monday through Friday and 9 a.m. to 4 p.m. Saturdays.



GATEWAY2000
"We've got a friend in the business."

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EXHIBIT 3

38

EXHIBIT 4

GATEWAY 2000

16MHz 286 VGA

- Intel® 80286 Processor
- 2 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 40 MB 17ms IDE Drive with 32K Cache
- 16-Bit VGA with 512K
- 14" Crystal Scan 1024 Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey™ Keyboard
- MS DOS® 5.0

\$1395**16MHz 386SX VGA**

- Intel® 80386SX Processor
- 2 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 40 MB 17ms IDE Drive with 32K Cache
- 16-Bit VGA with 512K
- 14" Crystal Scan 1024 Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft® Mouse
- MS DOS 5.0
- MS Windows™ 3.0

\$1495**20MHz 386SX CACHE**

- Intel 80386SX Processor
- 32K Cache RAM
- 4 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 80 MB 17ms IDE Drive with 32K Cache
- 16-Bit VGA with 512K
- 14" Crystal Scan 1024 Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$1895**25MHz 386 VGA**

- Intel 80386 Processor
- 4 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 80 MB 17ms IDE Drive with 32K Cache
- 16-Bit VGA with 1 MB
- 14" Crystal Scan 1024NI Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$2095**BEST BUYS**

- Get our 33 MHz 386 Cache system, same configuration as listed, with a 120 MB IDE hard drive instead of the 200 MB drive. **\$2495**

- Same features as our 33 MHz 486 Cache system except this machine has 4 MB RAM, instead of 8, and a 120 MB IDE hard drive, instead of the 200 MB drive in our standard configuration. **\$2845**

33MHz 386 CACHE

- Intel 80386 Processor
- 64K Cache RAM
- 4 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 200 MB 15ms IDE Drive with 64K Multi-Segmented Cache
- 16-Bit VGA with 1 MB
- 14" Crystal Scan 1024NI Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$2795 -**25MHz 486 CACHE**

- Intel 80486 Processor
- 64K Cache RAM
- 4 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 200 MB 15ms IDE Drive with 64K Multi-Segmented Cache
- 16-Bit VGA with 1 MB
- 14" Crystal Scan 1024NI Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$2995**33MHz 486 CACHE**

- Intel 80486 Processor
- 64K Cache RAM
- 8 MB RAM, Expands to 64 MB
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 200 MB 15ms IDE Drive with 64K Multi-Segmented Cache
- 16-Bit VGA with 1 MB
- 14" Crystal Scan 1024NI Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$3395**The Extras - That Don't Cost Extra At Gateway**

- One-year warranty on parts and labor
- Replacement parts shipped quickly via overnight shipping at no charge
- 30-day money-back guarantee
- Lifetime toll-free technical support from the service organization that won PC World's Service Excellence Award
- Free on-site service to most locations
- Free bulletin board technical support

- C.O.D. terms and major credit cards honored
- Net 30-day credit terms available to qualified commercial customers
- Leasing options available to qualified commercial customers
- MS DOS 5.0 is standard; versions 4.01 and 3.3 are available at no extra charge
- The programmable AnyKey keyboard is standard; a 101-key keyboard is also available at no extra charge

All prices are subject to change. Prices do not include shipping.

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Corporate Sponsor - a program of the American Forestry Association, Box 2000, Washington, DC 20013. Call us for information on how you can support Global Relief.

Sales Hours: 7am-10pm Weekdays, 9am-4pm Saturdays (Central Time)
 Service Hours: 6am-Midnight Weekdays, 9am-2pm Saturdays (Central Time)



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 610 Gateway Drive • N. Sioux City, SD 57109 • 605-232-2000 • Fax 605-232-2023



EXHIBIT 4

60

©1997 Gateway 2000, Inc. Gateway 2000 and AnyKey are trademarks of Gateway 2000, Inc. All other names and product names are trademarks or registered trademarks of their respective companies.

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126 F.T.C.

EXHIBIT 5

THE LINE THAT SWEEP 'EM AWAY

16 MHz 286

- Intel 286 Processor
- 64K Cache RAM
- 8MB RAM
- 1.2MB 5.25" Drive
- 44MB 3.5" Drive
- 800MB 15ms IDE Drive with 32K Multi-Segmented Cache
- 16-Bit VGA with 512K
- 14" Crystal Scan 1024
- Color VGA Monitor
- 2 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- MS DOS 5.0
- MS Windows 3.0

\$1345

16 MHz 386SX

- Intel 386SX Processor
- 64K Cache RAM
- 8MB RAM
- 1.2MB 5.25" Drive
- 44MB 3.5" Drive
- 800MB 15ms IDE Drive with 32K Multi-Segmented Cache
- 16-Bit VGA with 512K
- 14" Crystal Scan 1024
- Color VGA Monitor
- 2 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$1445

20 MHz 386SX

- Intel 386SX Processor
- 64K Cache RAM
- 8MB RAM
- 1.2MB 5.25" Drive
- 44MB 3.5" Drive
- 800MB 15ms IDE Drive with 32K Multi-Segmented Cache
- 16-Bit VGA with 512K
- 14" Crystal Scan 1024
- Color VGA Monitor
- 2 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$1745

25 MHz 386

- Intel 386 Processor
- 128K Cache RAM
- 8MB RAM
- 1.2MB 5.25" Drive
- 44MB 3.5" Drive
- 800MB 15ms IDE Drive with 32K Multi-Segmented Cache
- 16-Bit VGA with 1MB
- 14" Crystal Scan 1024
- Color VGA Monitor
- 2 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$1895

33 MHz 386

- Intel 386 Processor
- 64K Cache RAM
- 8MB RAM
- 1.2MB 5.25" Drive
- 44MB 3.5" Drive
- 800MB 15ms IDE Drive with 32K Multi-Segmented Cache
- 16-Bit VGA with 1MB
- 14" Crystal Scan 1024
- Color VGA Monitor
- 2 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$2145

33 MHz 486

- Intel 486 Processor
- 64K Cache RAM
- 8MB RAM
- 1.2MB 5.25" Drive
- 44MB 3.5" Drive
- 800MB 15ms IDE Drive with 32K Multi-Segmented Cache
- 16-Bit VGA with 1MB
- 14" Crystal Scan 1024
- Color VGA Monitor
- 2 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$2495

33 MHz 486 EISA

- Intel 486 Processor
- 128K Cache RAM
- 8MB RAM
- 1.2MB 5.25" Drive
- 44MB 3.5" Drive
- 800MB 15ms SCSI Drive with 128K Multi-Segmented Cache
- 32-Bit EISA SCSI Controller
- 16-Bit VGA with 1MB
- 14" Crystal Scan 1024
- Color VGA Monitor
- 2 Parallel/2 Serial Ports
- 1 PS/2 Mouse Port
- 124-Key AnyKey Keyboard
- Microsoft Mouse
- MS DOS 5.0
- MS Windows 3.0

\$3895

BEST BUYS

Get our 33 MHz 386 system, same configuration as listed, with a 120MB IDE hard drive instead of the 200MB drive.

\$2145

Same features as our 33 MHz 486 system except this machine has 4MB RAM instead of 8, and a 120MB IDE hard drive instead of the 200MB drive in our standard configuration.

\$2495

INCLUDED WITH EVERY SYSTEM:

- One-year warranty • 30-day money-back guarantee • Lifetime toll-free technical support • Free on-site service to most locations • Free bulletin board technical support • Software and optional peripherals installed at factory • Software diskettes and comprehensive hardware and software manuals provided

Sales Hours: 7am-10pm Weekdays, 9am-4pm Saturdays (CST)
Service Hours: 6am-Midnight Weekdays, 9am-2pm Saturdays (CST)
All prices are subject to change. Prices do not include shipping.




800-523-2000
610 Gateway Drive • N. Sioux City, SD 57109 • 605-232-2000 • Fax 605-232-2023

EXHIBIT 5

76

888

Complaint

EXHIBIT 6

*Gateway 2000 was a record, what would
it be like? Music to your ears!*

Those Old-Time Country Values The Low Overheads

Our album would kick off with some great Country
songs because, after all, we're the original country PC
company with the low-overhead prices. We're located



the heartland of America where our factory is
surrounded by corn and bean fields. KSUX country radio,
the Super Pig, is the number
one station in these
parts (no fooling).
Gateway folks are
mostly midwest born
and raised, and it shows in our quality workmanship
and in the friendly, down-home way we treat our
customers. We'll bend over backwards to please you.
When you buy from Gateway, you get the best price,
quality and service. That's a value nobody can beat.



Gimme the Good Stuff - by Hammer and the Boys

This song is dedicated to everybody who's tired of
new technology becoming affordable only after it's
outstaged by something better. At Gateway, we offer
the best, newfangled technology at homespun prices.

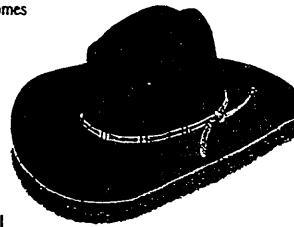
Microsoft's MSN-UI makes a mighty fine Windows machine!

Baby, Let Me Baby You by The Support Group

Every Gateway 2000 system comes
with excellent after-the-sale
support. You get a 30-day
money-back guarantee. If
you don't like your system,
send it back within 30 days for
a refund. All systems come
with a one-year limited
warranty and telephone technical
support for the life of the system from our
award-winning tech department. We received PC
World's World Class Award in 1992 for best service
and support in the hardware category. And in a
February 1993 survey, PC Magazine readers once again
gave Gateway an excellent rating for service and
reliability. You also get a lifetime BBS membership
for additional technical support and online forums.

We offer on-site service to most locations in the
country (factory service only for notebooks).
Replacement parts leave our factory as quickly as
possible; we pay overnight shipping. Plus we now have
interactive documentation on desktop systems with
pictures and text right on your hard drive (in addition to
comprehensive hardware and software manuals).

We make it easy for you to buy a Gateway PC, too,
with convenient payment options including major credit
cards and C.O.D. terms. Net 30-day terms and leasing
options are also available to qualified commercial
customers. All this and your great-looking Gateway
PC comes in our distinctive, country cow-spotted box!



To serve you better,
we've hired and
trained over 500 new
people for customer
service, technical
support, sales and
manufacturing in the
past five months,
bringing our total
number of employees
to over 1,900.



EXHIBIT 6



254

800-846-2029

EXHIBIT 7

12MHZ 286VGA

- 80286-12 Processor
- 1 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 40 MB 17ms IDE Drive with 32K Cache
- 16 Bit VGA with S12K
- 14" Gateway Crystal Scan 1024 Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 101 Key Keyboard
- MS DOS 3.3 or 4.01

\$1495.00

GATEWAY 386SX

- 4 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 40 MB 17ms IDE Drive with 32K Cache
- 16 Bit VGA with 512K
- 14" Gateway Crystal Scan 1024 Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 101 Key Keyboard
- MS DOS 3.3 or 4.01
- MS WINDOWS 3.0

\$1895.00

25MHZ 386™ VGA

- 4 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 80 MB 17ms IDE Drive with 32K Cache
- 16 Bit VGA with 1 MB
- 14" Gateway Crystal Scan 1024NT Color VGA Monitor
- 1 Parallel/2 Serial Ports
- 101 Key Keyboard
- MS DOS 3.3 or 4.01
- MS WINDOWS 3.0

\$2395.00

25MHZ 386CACHE

- E7 64K Cache RAM
 F 4 MB RAM
 I 1.2 MB 5.25" Drive
 J 1.44 MB 3.5" Drive
 K 80 MB 17ms IDE Drive
 with 2K Cache
 L 16MBit VGA with 1 MB
 M 486 Gateway Crystal 386 1024NI
 Color VGA Monitor
 N Parallel/2 Serial Ports
 O 101 Key Keyboard
 P MS DOS 3.3 or 4.01
 Q MS WINDOWS 3.0

\$2695.00

33MHZ 386VGA

- 64K Cache RAM
- 4 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 200 MB 15ms IDE Drive with 64K Multi-Segmented Cache
- 16 Bit VGA with 1 MB 3
- 14 Gateway Control Scan 400N1
- Color VGA Monitor
- Parallel/2 Serial Ports
- 101 Key Keyboard
- MS-DOS 3.3 or 4.01
- MS WINDOWS 3.0

\$3195.00

25MHZ 486™ VGA

- 64K Cache RAM
- 8 MB RAM
- 1.2 MB 5.25" Drive
- 1.44 MB 3.5" Drive
- 200 MB 15ms IDE Drive
- with 64K Multi-Segmented Cache
- 16 Bit VGA with 1 MB
- 14" Gateway Crystal Scan 1024NI
- Color VGA Monitor
- 2 RS232C/2 Serial Ports
- 101 Key Keyboard
- MS-DOS 5.0
- MS WINDOWS 3.0

\$3995.00

33MHz 486VGA

- Same configuration as the 25 MHz 486.

\$4395.00

BEST BUY

- Same features as our 33 MHz 386 VGA system except this machine has an 80 MB 17ms IDE Drive instead of the 200 MB 15ms IDE Drive.

\$2795.00

STANDARD FEATURES & SERVICES

- Microprocessor with 640K RAM
• With all 4000 series
• 70-day money-back guarantee
• One-year warranty
• 24-hour technical support
• Learning options available
• Diskette included
- NEW CRYSTAL SCAN 1024NI**
- Our new 14" Gateway Crystal Scan 1024NI is now introduced for a fourteen, flexible-discount 1024 x 768 @ 60 Hz, 800 x 600 @ 72 Hz.

NEW CRYSTAL SCAN 1024NT

- Our new 14" Gateway Crystal Scan 1020A color VGA monitor comes standard with all 386 DX and 486 systems. This monitor is non-interlaced for a flawless, flicker-free display. 1024 x 768 @ 60 Hz. 800 x 600 @ 72 Hz. 28 D.P.
- We custom-build each Gateway 2800 computer to customer specifications. We'll gladly provide you with a quote on your configuration. 386 and 486 are trademarks of Intel Corporation.
- Due to the volatility of the DRAM market, all prices are subject to change. Prices do not include shipping.



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EXHIBIT 7
37

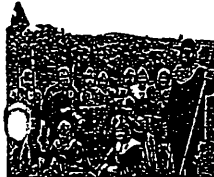
EXHIBIT 8



Ted Wade, President: "It couldn't be better doing this company—our work is fun and our prices will tell you we're a company serious about doing business with you."



From left: Steve George, Sales Supervisor; Steve George, Shipping; Ron Canale, Telecommunications Supervisor; Mike Hammond, Vice President, Product Development; Bruce Kruse, Vice Customer Service.



From left: John Baker, PC Analyst; Steve George, Shipping; Ron Canale, Telecommunications Supervisor; Mike Hammond, Vice President, Product Development; Bruce Kruse, Vice Customer Service; Peter Thompson, Shipping; Steve George, Shipping; Ron Canale, Telecommunications Supervisor; Mike Hammond, Vice President, Product Development; Bruce Kruse, Vice Customer Service.

THE EXTRAS

That Don't Cost Extra At Gateway

- ✓ One-year warranty
- ✓ 30-day money-back guarantee
- ✓ Lifetime toll-free technical support from the service organization that won PC World's Service Excellence Award
- ✓ Free on-site service to most locations
- ✓ Free bulletin board technical support
- ✓ Replacement parts sent via overnight shipping free of charge
- ✓ Leasing options available to commercial customers
- ✓ Sales hours 7am-10pm weekdays, 9am-4pm Saturdays (Central Time)
- ✓ Service hours 6am-midnight weekdays, 9am-2pm Saturdays (Central Time)
- ✓ Toll-free lines now connected for Canada: 1-800-456-7890
- ✓ Custom 124-key programmable AnyKey keyboard standard with all systems
- ✓ MS DOS 5.0, featuring improved memory efficiency, enhanced/new utilities and new user shell, standard with all systems
- ✓ Flicker-free non-interlaced Crystal Scan 1024 x 768 color monitors standard with all 386 DX and 486 systems



Dave Russell, Director of Purchasing: "They made us play the hard guy because I'm serious about getting the best prices on components—good prices we pass on to you."



From left: Anne Leffler, Secretary; Ben McCall, Sales; Frances Chabot, Production; Steve George, Shipping; Jeff Whelan, Inventory; Tim Hellingrath, Finance; Bruce Kruse, Shipping Allocation.



Bill Chivers, Marketing Research Analyst, and other employees: "Gateway is a place where you can be a part of the team."

CURTAIN CALL

The characters in our annual summer fun ad were played by a few of the 750 dedicated people who work at Gateway 2000. All photos were shot in and around our hometown of N. Sioux City, South Dakota.



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Complaint

126 F.T.C.

EXHIBIT 9

THE LINE THAT SWEEP 'EM AWAY

16 MHz 286	16 MHz 386SX	20 MHz 386SX	25 MHz 386
- Intel 286 Processor 16MB Cache RAM 8MB RAM 1.2MB 5.25" Drive 1.44MB 3.5" Drive 200MB 15ms IDE Drive 28K Multi-Segmented Cache 16-Bit VGA with 512K 14" Crystal Scan 1024 - Color VGA Monitor 1 Parallel/2 Serial Ports 1 PS/2 Mouse Port 124-Key AnyKey Keyboard - Microsoft Mouse - MS DOS 5.0 - MS Windows 3.0	- Intel 386SX Processor 16MB Cache RAM 8MB RAM 1.2MB 5.25" Drive 1.44MB 3.5" Drive 200MB 15ms IDE Drive 28K Multi-Segmented Cache 16-Bit VGA with 512K 14" Crystal Scan 1024 - Color VGA Monitor 1 Parallel/2 Serial Ports 1 PS/2 Mouse Port 124-Key AnyKey Keyboard - Microsoft Mouse - MS DOS 5.0 - MS Windows 3.0	- Intel 386SX Processor 16MB Cache RAM 8MB RAM 1.2MB 5.25" Drive 1.44MB 3.5" Drive 200MB 15ms IDE Drive 28K Multi-Segmented Cache 16-Bit VGA with 512K 14" Crystal Scan 1024 - Color VGA Monitor 1 Parallel/2 Serial Ports 1 PS/2 Mouse Port 124-Key AnyKey Keyboard - Microsoft Mouse - MS DOS 5.0 - MS Windows 3.0	- Intel 386 Processor 16MB Cache RAM 8MB RAM 1.2MB 5.25" Drive 1.44MB 3.5" Drive 200MB 15ms IDE Drive 28K Multi-Segmented Cache 16-Bit VGA with 512K 14" Crystal Scan 1024 - Color VGA Monitor 1 Parallel/2 Serial Ports 1 PS/2 Mouse Port 124-Key AnyKey Keyboard - Microsoft Mouse - MS DOS 5.0 - MS Windows 3.0
\$1345	\$1445	\$1745	\$1895

33 MHz 386	33 MHz 486	33 MHz 486 EISA
- Intel 80386 Processor 16MB Cache RAM 8MB RAM 1.2MB 5.25" Drive 1.44MB 3.5" Drive 200MB 15ms IDE Drive 28K Multi-Segmented Cache 16-Bit VGA with 1MB 14" Crystal Scan 1024NI - Color VGA Monitor 1 Parallel/2 Serial Ports 1 PS/2 Mouse Port 124-Key AnyKey Keyboard - Microsoft Mouse - MS DOS 5.0 - MS Windows 3.0	- Intel 80486 Processor 16MB Cache RAM 8MB RAM 1.2MB 5.25" Drive 1.44MB 3.5" Drive 200MB 15ms IDE Drive with 4MB RAM 28K Multi-Segmented Cache 16-Bit VGA with 1MB 14" Crystal Scan 1024NI - Color VGA Monitor 1 Parallel/2 Serial Ports 1 PS/2 Mouse Port 124-Key AnyKey Keyboard - Microsoft Mouse - MS DOS 5.0 - MS Windows 3.0	- Intel 80486 Processor 128K Cache RAM 8MB RAM 1.2MB 5.25" Drive 1.44MB 3.5" Drive 340MB 15ms SCSI Drive with 128K Multi-Segmented Cache 37-Bit EISA SCSI Controller 16-Bit VGA with 1MB 14" Crystal Scan 1024NI - Color VGA Monitor 1 Parallel/2 Serial Ports 1 PS/2 Mouse Port 124-Key AnyKey Keyboard - Microsoft Mouse - MS DOS 5.0 - MS Windows 3.0
\$1995	\$2145	\$2495

BEST BUYS

#1 Get our 33 MHz 386 system, same configuration as listed, with a 120MB IDE hard drive instead of the 200MB drive. **\$2145**

* Same features as our 33 MHz 486 system except this machine has 4MB RAM instead of 8, and a 120MB IDE hard drive instead of the 200MB drive in our standard configuration. **\$2495**

INCLUDED WITH EVERY SYSTEM:

- One-year warranty • 30-day money-back guarantee • Lifetime toll-free technical support • Free on-site service to most locations • Free bulletin board technical support • Software and optional peripherals installed at factory • Software diskettes and comprehensive hardware and software manuals provided

Sales Hours: 7am-10pm Weekdays, 9am-4pm Saturdays (CST)
 Service Hours: 6am-Midnight Weekdays, 9am-1pm Saturdays (CST)
 All prices are subject to change. Prices do not include shipping.




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EXHIBIT 9

76

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 Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of Section 5 of The Federal Trade Commission Act ("FTC Act"); the Magnuson-Moss Warranty Act ("Warranty Act") and two Rules promulgated thereunder: the Rule concerning the Disclosure of Written Consumer Product Warranty Terms and Conditions ("Disclosure Rule"); and the Rule concerning the Pre-Sale Availability of Written Warranty Terms ("Pre-Sale Rule"). Under Section 110(b) of the Warranty Act, 15 U.S.C. 2310(b), violations of the Warranty Act or its Rules are also violations of Section 5 of the FTC 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 the 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 Acts, and that a 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:

A. Respondent Gateway 2000, 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 610 Gateway Drive, North Sioux City, SD.

B. 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

1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rules 701 and 702, 16 CFR Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, shall apply to the terms used in this order.

2. "*On-Site Service*" shall mean the provision of the services of a qualified technician at the location of a defective or allegedly defective product sold or supplied by Gateway 2000, Inc. ("respondent") in an attempt to repair, replace, or otherwise correct a problem described by a purchaser to the respondent.

3. "*Clearly and conspicuously*" shall mean that the disclosure must be given in: (1) twelve point type where the representation that triggers the disclosure requirement is given in twelve point or larger type; or (2) the same type size as the representation that triggers the disclosure requirement where that representation is given in a type size that is smaller than twelve point type.

I.

It is ordered, That respondent Gateway 2000, Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product for which the respondent offers a written warranty, do forthwith cease and desist from:

A. Excluding liability for any incidental or consequential damages arising from any consumer injury without clearly and conspicuously disclosing, as provided by Section 701.3(a)(8) of the Disclosure Rule, 16 CFR 701.3(a)(8), that some states do not allow for such exclusion;

B. Failing to disclose, as provided by Section 701.3(a)(9) of the Disclosure Rule, 16 CFR 701.3(a)(9), that certain states may give the consumer legal rights in addition to those provided by the warranty;

C. Disclaiming any implied warranty, except as provided by Section 108 of the Warranty Act, 15 U.S.C. 2308;

D. Failing to make the text of any written warranty on a consumer product readily available for examination by prospective buyers prior to sale through utilization of one or more means specified in Section 702.3(c) of the Pre-Sale Availability Rule, 16 CFR 702.3(c).

II.

It is further ordered, That respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product, do hereby cease and desist from failing to provide a full refund of the purchase price of a product, including any shipping costs, insurance, handling or any other fee or charge paid by the consumer, within seven (7) business days of the respondent's acceptance, after a reasonable opportunity for inspection, of the merchandise returned by the consumer for a refund pursuant to any money-back guarantee offer made by respondent; provided, however, that respondent may deduct a service charge or other fees such as shipping and handling costs only if respondent has disclosed that such deductions will be made, clearly and conspicuously and in close proximity to the money-back guarantee offer made by respondent.

III.

It is further ordered, That respondent, its successors and assigns, shall pay to the Federal Trade Commission, by cashier's check or certified check made payable to the U.S. Treasury and delivered to Commission counsel, Cleveland Regional Office, 1111 Superior Avenue, Suite #200, Cleveland, OH 44114, the sum of Two Hundred Eighty Nine Thousand Four Hundred Twenty Nine and 05/100 (\$289,429.05) Dollars. Respondent shall make this payment on or before the tenth day following the date of service of the order. In the event of any default on any obligation to make payment under this section, interest, computed pursuant to 28 U.S.C. 1961(a), shall accrue from the date of default to the date of payment. No portion of the respondent's payment shall be deemed payment of any fine, penalty, or punitive assessment.

IV.

It is further ordered, That respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product, do forthwith cease and desist from representing, in any manner, directly, or by implication, that it shall provide On-Site Service unless respondent discloses, clearly and conspicuously and in close proximity to the representation, any material limitations on obtaining On-Site Service.

V.

It is further ordered, That respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the sale or offering for sale of any consumer product, for which the respondent offers a written warranty, do forthwith cease and desist from misrepresenting a consumer's remedies under its warranties for claims based upon incidental or consequential damages.

VI.

It is further ordered, That respondent shall, within thirty (30) days of the date of service of this order, deliver to each of the respondent's current directors and officers, and to all managing employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility with respect to the subject matter of this order, a copy of this order to cease and desist. For a period of three (3) years thereafter, respondent shall distribute the same to all future directors and officers, and to all future managing employees, agents, and representatives within thirty (30) days after the inception of their affiliation with respondent.

VII.

It is further ordered, That respondent shall, within thirty (30) days of the date of service of this order, provide written instructions to all current managing employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility on behalf of respondent as to respondent's specific obligations and duties under the Magnuson-Moss Warranty Act (15 U.S.C. 2301, *et seq.*),

including, but not limited to, Section 108 (15 U.S.C. 2308), thereof, and Rules 701 and 702, 16 CFR Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, and this order. For a period of three (3) years thereafter, respondent shall provide said instructions to all future such managing employees, agents, and representatives within thirty (30) days after the inception of their affiliation with respondent.

VIII.

It is further ordered, That respondent shall, for a period of not less than five (5) years from the date of service of the order, maintain and upon request make available to the Federal Trade Commission for inspection and copying (i) copies of all written instructions provided by respondent to its supervising employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility on behalf of respondent pursuant to Part VII, above; (ii) all warranties on consumer products costing more than \$15 for which the respondent is the warrantor; and (iii) exemplars of all advertising by the respondent.

IX.

It is further ordered, That respondent and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporate entity 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, Washington, D.C.

X.

It is further ordered, That this order will terminate on December 22, 2018, or twenty 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 paragraph in this order that terminates in less than twenty 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 paragraph.

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 paragraph as though the complaint was never 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.

XI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order on it, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Anthony recused.

**Re:Petition of Mt. Olympus Financial, Dan Horman, and
Annette Horman to Quash Civil Investigative Demands --
File No.982-3543 (Mt. Olympus Financial)**

August 11, 1998

Dear Messrs. Atkin and Hawkins:

This letter advises you of the Federal Trade Commission's ruling on the above-referenced Petition to Quash ("Petition"). The decision was made by Commissioner Sheila F. Anthony, acting as the Commission's delegate. *See* 16 CFR 2.7(d)(4).

The Petition is denied for the reasons stated below. As also set forth below, the new deadline for Mt. Olympus Financial, L.C. and its principals, Dan and Annette Horman (together "Petitioners" or "Mt Olympus"), to respond to, and otherwise comply with, the Civil Investigative Demands ("CID") is Wednesday, August 26, 1998.

Petitioners have the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter.¹ The filing of a request for review by the full Commission does not stay or otherwise affect the new return date -- August 26, 1998 -- unless the Commission rules otherwise. *See* 16 CFR 2.7(f).

I. SUMMARY OF THE DISPUTE

Mt. Olympus is a subprime lender. At issue in this investigation is whether Mt. Olympus violated Section 5 of the FTC Act, 15 U.S.C. 45(a); the Truth in Lending Act ("TILA"), 15 U.S.C. 1601 *et seq.*, which includes the Home Ownership and Equity Protection Act ("HOEPA"); and/or TILA's implementing regulation, Regulation Z, 12 CFR Part 226. More specifically, the Commission wants to pursue preliminary evidence it has gathered suggesting that Petitioners induced consumers to falsify their loan applications to indicate that the loans were for business purposes when, in fact, those loans were for personal, family, or household purposes. The consumer protection requirements imposed by TILA do not apply to business loans.²

¹ This letter is being delivered by facsimile and by express mail. The facsimile is being provided only as a courtesy. Computation of the time for appeal, therefore, should be calculated from the date you receive the express mail copy of this letter.

² The Truth in Lending Act specifically exempts certain transactions, including, "[c]redit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes" 15 U.S.C. 1603(l), *see also* 12 CFR 226.3.

At the heart of this dispute is Petitioners' refusal to honor specification 5 of the CIDs which requests access to all of Mt. Olympus' loan files for the relevant period -- approximately 110 files. Petitioners contend that they only make business loans, and, therefore, their files are not relevant to an investigation aimed at uncovering violations of TILA and HOEPA. Rather than provide access to the entire set of files, Petitioners suggest that access be limited to the files of those borrowers whom the FTC can identify as claiming that their loans were for consumer, rather than business, purposes. As explained in detail below, this is not viable alternative for several reasons, not the least of which is that borrowers' willingness to cooperate in the investigation might be chilled if they knew that they would be singled out to their lender as having provided damaging testimony or evidence.

II. BACKGROUND

On July 6, 1998, pursuant to its omnibus resolution, dated June 1, 1998, the Commission issued identical CIDs to each of the three Petitioners, requesting various documents. The June 1, 1998 resolution authorizes the use of compulsory process in non-public investigations "[t]o determine whether various unnamed subprime lenders have engaged or are engaging in acts or practices in violation of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*, as amended, including but not limited to the Home Ownership and Equity Protection Act of 1994, and its implementing Regulation Z, 12 CFR 226, as amended, and whether they have engaged or are engaging in unfair or deceptive acts or practices in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), as amended." The resolution also authorizes investigation to determine whether action to obtain redress for injury to consumers or others would be in the public interest. All three CIDs specified a return date of July 20, 1998.

The 13 specifications contained in each CID seek various documents relating to the loans made by Mt. Olympus and Mt. Olympus' business practices generally. For example, the CIDs request documents relating to the total number of loans made, the dates of those loans, the loan amounts, the interest rates and other terms of the loan contracts, the payment status of the loans, and foreclosure activities. With respect to Mt. Olympus' business activities, the CIDs request documents relating to, among other things, the identity of Mt. Olympus' employees, complaints received from borrowers, communications

with governmental agencies, private litigation or law enforcement actions, and policies and procedures regarding compliance with TILA.³

Rather than produce the requested documentary materials, on or about July 20, 1998, Petitioners filed a Petition to Quash the CIDs. Petitioners assert three main arguments in support of their Petition: (1) the information sought is not within the scope of the FTC's investigation; (2) the information sought is not relevant to the matters under investigation; and (3) the requests are vague, overly broad, and unduly burdensome.⁴

Commissioner Anthony has carefully reviewed the CIDs, the Petition to Quash, the declaration of Blake Atkin, and all of the various correspondence filed with the Petition and finds that none of Petitioners' arguments support quashing the CIDs.

III. ANALYSIS

A. *Scope of Investigation and Relevance of the Information Sought*

Petitioners contend that they should not have to comply with the CIDs because their activities are outside of the scope of the investigation authorized by the Commission's June 1, 1998 resolution regarding subprime lenders; therefore, they add, the information sought in the CIDs cannot be relevant. Petitioners are mistaken on both of these points. As shown below, Petitioners' activities *are within the scope* of the authorized investigation, and the information sought by the CIDs *is relevant* to that investigation.

1. Scope

This investigation is intended to uncover unfair or deceptive business practices by subprime lenders. Petitioners do not dispute that Mt. Olympus is a subprime lender. Instead, they attempt to place

³ In their submission, Petitioners repeatedly mention that they previously provided a great deal of the material sought by the CIDs in response to an April, 1998 access letter. Petition at 1-3; Atkin Affidavit ¶4. While Petitioners' prior cooperation may be commendable, there is no dispute that the CIDs seek documents that have not been previously produced, e.g., all of the loan files. If Petitioners' description of the previous voluntary production is intended to suggest that the CIDs are somehow inappropriate as duplicative of the access letter, Petitioners should note that the instant CIDs contain the standard instruction intended to deal with this issue: "If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission."

⁴ The first and the second argument are closely related. Petitioners addressed the two arguments together in their Petition, and those arguments are addressed together in this letter decision as well.

themselves outside of the scope of the investigation by claiming that their activities do not fall within the statutes at issue.⁵

Petitioners incorrectly define the scope of the investigation as limited to uncovering violations of TILA and Regulation Z. They attempt to dismiss the portion of the resolution regarding the FTC Act -- "[t]o determine... whether [subprime lenders] have engaged or are engaging in unfair or deceptive acts or practices in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)" -- as "general, vague language" that can be ignored. Petition at 5 n.2. Section 5 of the Commission's original authorizing statute -- the cornerstone of the Commission's consumer protection authority -- cannot be dismissed so easily. Indeed, the Commission's investigation is not nearly so narrow as Petitioners suggest, but rather encompasses all "unfair or deceptive acts or practices" by subprime lenders as well as any specific violations of TILA and Regulation Z.

Under this proper definition of the scope of the investigation, even if Petitioners do indeed only make business loans and, therefore, are not subject to TILA, they are still within the scope of the investigation by virtue of Section 5. This fact renders moot Petitioners' argument that the loan applications it has already produced establish, as a matter of law, that it only makes business loans. It is worth noting, however, that the case law Petitioners cite in support this argument is easily distinguished. In those cases, the borrowers, in essence, deceived the lender about the purpose of the loan and later sought refuge in state usury laws applicable only to consumer transactions. Notably lacking in those cases was any evidence that the lenders required the borrowers to mischaracterize their loans as business loans or that the lenders knew that the borrowers intended to use the loan proceeds for personal uses. Here, by contrast, the Commission has evidence suggesting that, in an apparent effort to evade the requirements of TILA and HOEPA, Petitioners actively induced consumers to falsify the purpose of their loan on the loan applications despite consumers having told them that

⁵ It is worth noting at the outset that the purpose of an investigation is to learn the nature of the target's *actual* activities; the target cannot deflect the investigation merely by proffering self-serving *claims* regarding its activities.

they intended to use the loan proceeds for personal, family or household purposes.⁶

Extensive case law regarding sham business loans establishes that objective manifestations of purpose, such as loan applications or affidavits attesting to a business purpose, are not determinative of the nature of the loan when the lender manipulates the loan's structure to appear as a business loan or when the lender requires the consumer to sign a false statement of business purpose in order to evade the laws designed to protect consumers. Moreover, the borrower is not estopped from denying the representations contained in a business purpose affidavit when the affidavit is executed at the request of the lender and the borrower is not informed of the implications of claiming a business purpose. The borrower's acquiescence in signing a false business purpose statement does not change the true character of the loan. *See, e.g., Brown v. Giger*, 111 Wash. 2d 76, 757 P.2d 523 (1988); *McGovern v. Smith*, 59 Wash. App. 721, 801 P.2d 250(1990); *Marashi v. Lannen*, 55 Wash. App. 820, 780 P.2d 1341(1989); *Aetna Finance Co. v. Darwin*, 38 Wash. App. 921, 691 P.2d 581 (1984); *Commercial Mortgage & Finance Co. v. Life Savings of America*, 129 Ill. 2d 42, 541 N.E.2d 661 (1989); *see also* "The Cost of Credit: Regulation and Legal Challenges," Kathleen E. Keest, National Consumer Law Center (1997 Cumulative Supplement).

2. Relevancy

Petitioners' incorrectly assert that they are outside the scope of the investigation, and, therefore, they reason, the documents sought cannot be relevant to the investigation. This relevancy argument is baseless and fails. Petitioners have made absolutely no supportable arguments, much less any showing, that the requests fall outside of the Commission's authority or this investigation's properly defined scope.

⁶ Throughout their submissions, Petitioners argue, without citation to any authority, that the Commission lacks "probable cause" for its CID requests. Petition at 2, 3 and 5, Affidavit of Blake S. Atkin at ¶¶ 3, 6. First of all, as noted above, Petitioners own Petition reports that the Commission staff has explained to Petitioners' counsel on more than one occasion that staff had contacted borrowers who stated that "they were told to falsely state on the form that the loan was for business purposes when in fact it was for consumer purposes." Petition at 4; *see also* Atkin Affidavit ¶¶ 7, 12. Second, the Commission is not held to any "probable cause" standard in conducting its investigations. As the Supreme Court explained almost fifty years ago, the Commission "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). Third, even if the Commission were required to have some evidence of a potential violation before it could investigate, it would be under no obligation to reveal the existence or nature of such evidence to the target of the investigation. In short, Petitioners' lack of probable cause complaints are meritless.

Even if, as Petitioners mistakenly assert, the investigation were limited to ferreting out TILA, HOEPA, and Regulation Z violations, the information requested in the CIDs falls well within this artificially narrowed scope. The documents sought will be relevant to the issue of whether Petitioners have indeed induced consumers to falsify their applications to characterize personal loans as business loans -- that is, whether Petitioners are indeed subject to TILA. If the evidence shows that the Petitioners have made personal loans, *i.e.*, are subject to TILA, the documents sought by the CIDs will also be useful in determining the nature and extent of any TILA, HOEPA, and Regulation Z violations, *e.g.*, instances when Petitioners failed to provide material disclosures, failed to afford borrowers their right to rescind, and/or committed prohibited practices.

Petitioners further argue that only the files of borrowers who claim to have been induced to falsify the purpose of their loans are relevant, and, therefore, only those files should be sought. Petition at 7 n.3. First, as explained above, this investigation is not limited to consumer loans, but rather encompasses all unfair or deceptive acts or practices by subprime lenders -- even acts and practices involving loans made for business purposes. Thus, the premise of Petitioners' offer of this limited production -- that only the consumer loans would be relevant to the investigation -- is fatally flawed. Second, even if the Commission were *primarily* interested in investigating consumer loan practices in this instance, Petitioners' suggested limitation is still unacceptable because, among other things, (1) access to all of the files is necessary to determine which of them relate to consumer loans; (2) the target of an investigation cannot be permitted to interfere with the FTC's investigatory methods and strategies; and (3) singling out these individual borrowers to their lender threatens to chill their willingness to cooperate in the investigation by exposing them to potential retaliatory action by Petitioners.

B. Burden

Petitioners' final contention is that the requests are vague, overly broad, and unduly burdensome. Petitioners' one paragraph argument on this issue provides no valid support for this contention.

Petitioners argue that the CIDs "request numerous compilations and financial calculations to be conducted by the CID recipients which are not normally done in connection with their business."

Petition at 8. First, Petitioners neither identify the specifications they contend make such requests nor offer any evidence that those requests would be unduly burdensome to meet. Second, these are *documentary* CIDs; they do not require the respondents to *create* compilations or *perform* financial calculations, but rather merely require that Petitioners *produce documents* in their possession, custody or control that fall within the terms of the specifications.⁷

Petitioners next argue that some of the information sought can be derived from the loan applications they have already provided. While some information sought, *e.g.*, the names and addresses of borrowers, may be available from these forms, the forms do not provide all of the information sought, nor as explained at length above, are the application forms necessarily accurate regarding key points such as the type of loan -- consumer or business. Indeed, many additional documents are necessary to assess Petitioners' compliance with the statutes cited in the Commission's June 1, 1998 resolution.

Petitioners final argument seems to be that the term "covered loan" is too vague. The CIDs define this term simply and directly as: "any credit transaction that is secured by the borrower's dwelling in which [any Petitioner] is the party to which the obligation was initially payable.... The definition excepts loans financing acquisition or initial construction as well as reverse mortgage transactions. In short, this definition is neither complicated nor vague. The key concept is that the security for the loan is the borrower's residence. In other words, all of Petitioners' loans are likely to fall within this definition.

In sum, Petitioners' burden argument is rejected. Petitioners completely fail: to specify which of the particular CID requests they consider vague, overly broad, or burdensome; to explain adequately the nature of any asserted deficiencies; or to provide any evidence supporting their contention that the requests would impose an undue burden upon them. Moreover, an examination of the CIDs themselves reveals that the specifications are narrow, relevant, and focused.

⁷ Perhaps Petitioners' confusion on this point stems from the fact that some of the specifications do not require production of *every* document relating to a particular set of facts, but rather only "documents sufficient to show . . ." the facts. Ironically, this convention is used to render compulsory process requests *less* burdensome.

IV. CONCLUSION

Among the Commission's investigatory powers is the ability to use civil investigative demands to gather information and the concomitant right to enforce those demands in the federal district courts. *See* 15 U.S.C. 20. The federal courts apply a deferential standard in deciding whether to enforce compulsory process issued by the Commission, asking only whether (i) the information sought is within the Commission's authority, (ii) the information sought is reasonably relevant to the investigation, and (iii) the request is not too indefinite or unduly burdensome. *See, e.g., FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992), *cert. denied* 507 U.S. 910 (1993). While this matter is, of course, not presently before a federal court, it is worth noting that the CIDs issued here meet all three of these criteria. This is an absolutely proper and statutorily authorized investigation. These CIDs seek information that is relevant to that investigation and have been crafted to avoid placing an undue burden on Petitioners. Indeed, as set forth above, the burden and vagueness objections advanced by Petitioners are unsupported and meritless.

For the foregoing reasons, the Petition is denied, and, pursuant to Rule 2.7(e), 16 CFR 2.7(e), Petitioners are directed to comply with the Civil Investigative Demands on or before Wednesday, August 26, 1998.