

IN THE MATTER OF

TIGER DIRECT, 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-3903. Complaint, Nov. 4, 1999--Decision, Nov. 4, 1999

This consent order, among other things, prohibits Tiger Direct, a Florida-based advertiser and distributor of computer products, from representing that it provides on-site warranty service without disclosing all limitations or conditions that apply to obtaining the on-site service, prohibits the respondent from failing to adhere to the disclosure provisions of the Warranty Act, and requires the respondent, within a reasonable period of time, to fulfill its obligations under the warranty to the consumer.

Participants

For the Commission: *Colleen Lynch, Andrew Caverly and Margaret Patterson.*

For the respondent: *Kip Schwartz, Holland & Knight, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and the Magnuson-Moss Warranty Act ("the Warranty Act"), 15 U.S.C. 2301 *et seq.*, and Rules 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), 16 CFR Parts 701 and 702, promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Tiger Direct, Inc., a corporation, ("Tiger" or "respondent"), has violated the provisions of said Acts and Rules, and it appearing to the Commission that this proceeding is in the public interest, alleges:

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.

2. Respondent Tiger Direct, Inc., is a Florida corporation with its principal office or place of business at 8700 West Flagler Street, 4th Floor, Miami, Florida.

3. Respondent has advertised, offered for sale, sold and distributed, among other items, personal computers, software, hardware, printers, modems, and monitors, all of which are consumer products. Therefore, respondent is a supplier of consumer products.

4. In the ordinary course and conduct of its 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.

5. 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.

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

6. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Tiger-brand computer systems, including but not necessarily limited to the attached Exhibits A through C. These advertisements and promotional materials contain the following statements:

- a. ONE-YEAR ON-SITE WARRANTY!
- b. 1 YEAR PREMIUM ON-SITE WARRANTY

7. Through the means described in paragraph six, respondent has represented, expressly or by implication, that:

a. For a period of one year after purchase, respondent would provide the on-site services of a technician to purchasers of Tiger-brand computer systems when notified that the computer system or any of its parts was defective or had malfunctioned.

b. Respondent would fulfill its obligations under its on-site warranty within a reasonable period of time after first being notified by a purchaser of a Tiger-brand computer system of a defect or malfunction.

8. In truth and in fact,

a. Respondent did not always provide the on-site services of a technician to purchasers of Tiger-brand computer systems when notified of a defect or malfunction; rather, respondent would not send a technician to provide on-site services until respondent's agent or third party service provider diagnosed the problem as a hardware failure over the telephone and determined that the consumer could not

make the repair; and furthermore, respondent would not provide on-site services for the computer mouse, keyboard and speakers.

b. Respondent did not fulfill its obligations under its on-site warranty within a reasonable period of time after first being notified by a purchaser of a Tiger-brand computer system of a defect or malfunction.

Therefore, the representations set forth in paragraph seven were, and are, false or misleading.

VIOLATIONS OF THE PRE-SALE AVAILABILITY RULE

9. Respondent has offered for sale to consumers Tiger-brand computer products with written warranties by means of catalogs or mail order solicitations, but has failed to disclose material warranty terms or otherwise comply with 16 CFR 702.3(c)(2)(I).

10. Section 110(b) of the Warranty Act, 15 U.S.C. 2310(b), 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). Therefore, respondent's failure to comply with the provisions of the Pre-Sale Availability Rule, 16 CFR 702, was, and is, a deceptive practice.

VIOLATIONS OF THE DISCLOSURE RULE

11. 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).

12. Respondent has provided written warranties, but has failed to disclose, as required by Section 701.3(a)(3) of the Disclosure Rule, 16 CFR 701.3(a)(3), what the warrantor will not pay for or provide, where necessary for clarification, specifically:

a. That on-site warranty service is only available after the technician and the customer determine that a hardware failure has occurred and that service is required; and

b. That on-site service does not include defects or malfunctions of the speakers, keyboard, mouse, or other external components.

13. Respondent has provided written warranties, but has failed to disclose, as required by Section 701.3(a)(5) of the Disclosure Rule, 16 CFR 701.3(a)(5), a step-by-step explanation of the procedure that the consumer should follow in order to obtain performance of any

warranty obligation, including the persons or class of persons authorized to perform warranty obligations.

14. Respondent has provided written warranties, attached as Exhibit D, that contain the following language:

LIMITATION OF LIABILITY

IN NO EVENT SHALL AEGIS BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS AND PROFITS

but has failed to disclose, as required by Section 701.3(a)(8) of the Disclosure Rule, 16 CFR 701.3(a)(8), the following: "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."

15. Respondent has provided written warranties but has failed to disclose, as required by Section 701.3(a)(9) of the Disclosure Rule, 16 CFR 701.3(a)(9), the following: "This warranty gives you specific legal rights, and you may also have other rights which vary from State to State."

16. Section 110(b) of the Warranty Act, 15 U.S.C. 2310(b), 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). Therefore, respondent's failure to comply with the provisions of the Disclosure Rule, 16 CFR 701, was, and is, a deceptive practice.

VIOLATIONS OF THE WARRANTY ACT

17. Section 103 of the Warranty Act, 15 U.S.C. 2303, provides that a warrantor of consumer products costing more than \$10 shall clearly and conspicuously designate any written warranty it offers as either a "full warranty" or a "limited warranty."

18. Respondent has made a written warranty for Tiger-brand computer products that cost more than \$10, but has failed to designate its written warranty as "full" or "limited" as provided in Section 103 of the Warranty Act, 15 U.S.C. 2303.

19. Respondent's failure to designate its written warranty as "full" or "limited" was, and is, a violation of Section 103 of the Warranty Act, 15 U.S.C. 2303, and, pursuant to Section 110(b), 15 U.S.C. 2310(b), was, and is, a deceptive practice.

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Complaint

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

21. Respondent has made a written warranty, attached as Exhibit D, that contains the following language:

THERE ARE NO OTHER WARRANTIES [sic] OR CONDITIONS RESPECTING THE EQUIPMENT, EXPRESS OR IMPLIED, AND AEGIS EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

22. Respondent's disclaimer of implied warranties was, and is, a violation of Section 108 of the Warranty Act, 15 U.S.C. 2308, and, pursuant to Section 110(b), 15 U.S.C. 2310(b), was, and is, a deceptive practice.

Complaint

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EXHIBIT A

09/26/99 10E 12:22 FAX 210 203 3420

FIC CLEVELAND

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Prices Slashed On Genuine Intel Pentium Systems!

Complete Multimedia Systems! Featuring The New Pentium 200MHz!
Ready To Run Right Out Of The Box! WINDOWS 95 PRE-LOADED! Why Pay More For Intel Quality & Performance?

Tiger presents a complete line of affordable Intel Pentium systems—ready to run with fast Pentium performance as soon as you take them out of the box and plug them in. Three versions available, all featuring 16MB high-speed Enhanced IDE hard disks, high-speed EDO memory, Internet ready modems—and much more. These are complete multimedia systems with Windows 95 pre-installed. They're remarkably low-priced—and you can purchase a complete multimedia system with true, reliable Pentium performance—up to an astounding 200MHz! All versions include genuine Intel Pentium processors with FPU, running at 133MHz, 166MHz, or the new 200MHz! Plus, you get a PCI motherboard with integrated, Enhanced IDE controller, and our best mid-tower case featuring 8 bays and triple-cooling fan design. With these complete multimedia systems, you can really feel that Pentium power!

Complete Multimedia Systems! Buy a complete system and you'll have a 1.8 GB hard drive, 16 MB of high-speed EDO RAM, a huge 256K Pentium Burst Cache, a speedy 45 GB-ROM drive (3X on the 200MHz), spectacular 16-bit sound, 28.8Kbps modem (31.5K on the 200MHz) plus 64-bit accelerated PCI video with 3MB video memory (4MB with 3D video and 3D VIRTUE processor on the 200MHz). Today's new software runs like a champ. Plus—all these systems are Internet Ready (Windows 95 pre-installed) and come complete with free technical support—starting at just \$149.99! They include a 1.44MB floppy drive, 2 high-speed 16550 serial ports and an enhanced ECP/EPP parallel port, rugged Windows 95 keyboard and a PS/2 mouse.



in, along with a high-quality 16-bit audio system and a pair of trim, digitally tuned speakers. Just add a monitor! Whatever you choose, you'll be upgrading to legendary Pentium power. We've included one of the latest PCI 64-bit motherboards to match the performance of the Pentium. Just one of its new features is the "Cache Module", which lets you upgrade the cache with a simple plug-in module. We've included a 256K module, but you can easily upgrade later for more.

Complete Pentium Systems! Ready-To-Run!

SALE! 133MHz, 166MHz, 200MHz Pentiums!

- 1.6GB EDO Hard Disk
- 16MB EDO RAM
- CD-ROM Drive
- 16-Bit Stereo Sound
- 28.8 or 31.5 Kbps Modem
- Windows 95 Loaded
- 1 Year Onsite Warranty
- 3D VIRTUE Video on P200



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Complaint

EXHIBIT B

08/20/99 10E 14:45 FAX 410 200 0740

FAX CLEVELAND

MMX Pentiums! Over 60% Faster! \$1379⁹⁹

The World's Fastest PC! Ready To Run Right Out Of The Box! Why Pay More For Intel Quality & Performance?

Tiger presents a complete line of affordable Intel Pentium MMX systems—ready to run with flawless Pentium performance as soon as you take them out of the box and plug them in. All featuring huge high-speed hard disks, high-speed EDO memory, Internet-ready fax-modems—and much more. These are complete multimedia systems with Windows 95 pre-installed. They're lower-priced than ever before—and you can purchase a complete multimedia system with true, reliable Pentium MMX performance—up to an astounding 200MHz! These new Pentium MMX systems cost less than last month's standard Pentium 100T system with MMX technology.

New Pentium MMX Technology! These hot new processors were created specifically to handle laser video, audio and graphics. Look for the "MMX Enabled" logo on new applications for up to 60% increase in speed. You'll see it soon on applications for graphics, multimedia, video editing and the like. MMX technology also guarantees complete compatibility with existing software.

Innovative Design! If you're looking for great value, we also have a Pentium 133 system for under \$1000. While MMX technology increases speed for new MMX-enabled software, existing software only runs 7% faster. For under \$1000, the Pentium 133MHz is still a great business PC.

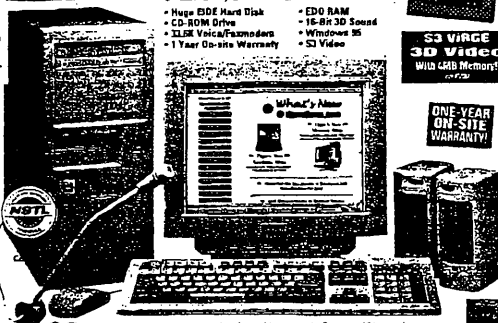
Complete Multimedia MMX System! Buy a ready-to-run MMX system and we'll throw in a giant 3.0 GB hard drive, 16 or 32 MB of EDO RAM, a speedy 4X or 8X CD-ROM drive, spectacular 16M Wave-5.1-bit audio with 3D Surround Sound, S/PDIF video with 3D graphics processing and 2 or 4 MB of video memory, 512KB of Pipelined Burst Cache, plus a 33.8K Video/Faxmodem that can be upgraded with software to the new 57.6K modem standard in the near future. Today's new software runs like a champ. Plus—all these systems are Internet Ready and come complete with free technical support—starting at just \$1379 for an MMX system! Includes a 4.44MB drive, 2 serial ports, parallel port, a pair of amplified stereo speakers, Windows keyboard and a PS/2 mouse. Just add a monitor!

Complete Pentium MMX Systems!

INTERNET

SALE! 133, 166 And 200MHz Pentiums!

- Huge EDO Hard Disk
- CD-ROM Drive
- 33.8K Video/Faxmodem
- 1 Year On-site Warranty
- EDO RAM
- 16-Bit 3D Sound
- Windows 95
- 3D Video



Monitor sold separately. See page 15 for monitors.

CUSTOM CONFIGURATIONS AVAILABLE!

Now we will custom-build these systems to your exact specifications! Please call us for a complete list of options and prices! Design the perfect system!

Processor	System Unit	RAM	Hard Disk	CD-ROM	Video/Fax	Speakers	Price
Pentium 133	486/333 ISA	16MB	3.0GB	4X	33.8K	2x	\$1379.99
Pentium MMX 133	486/333 ISA	16MB	3.0GB	4X	33.8K	2x	\$1379.99
Pentium MMX 200	486/333 ISA	16MB	3.0GB	4X	33.8K	2x	\$1379.99

These systems come with a one year on-site warranty. We will gladly repair or at our option replace defective units. Sorry, but our prices are always changing on CPUs, we do not offer price protection in the same price rise or fall.

Also Available Pentium MMX Upgrades From Just \$319⁹⁹

Motherboard/Case Upgrade Prices SLASHED! The Smartest Way To Upgrade!

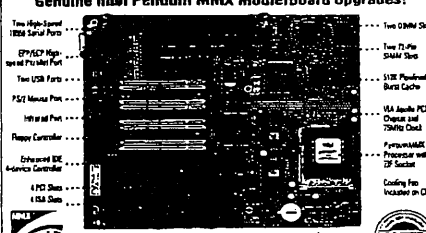
The Smartest Way To Get A New Pentium MMX! Upgrading your existing system is easy—and affordable thanks to these new 100T prices. The motherboard/case upgrade takes under an hour. Just add your hard drive, memory, video card, monitor, keyboard and mouse. This is the right way to upgrade an older computer. From 486 to Intel Pentium or new Pentium with MMX technology just like that!

Motherboard and Case Kit! Top quality systems, built from the ground up with all the very latest in speed technology and Plug-and-Play simplicity. Is it difficult? Not anymore! If you've ever installed a video card—you can handle one of these upgrades—no stress!

Buy Just As Much Pentium As You Want! Starting from just \$319.99, you can have Pentium processing power plus this phenomenal 64-bit motherboard delivered to your door. Includes 512K Pipelined Burst cache, local bus BIOS Controller, 3 (1650 serial) ports, 1 BCP/EPP parallel port, 4 PCI and 4 ISA expansion slots, USB ports and much more. Also includes two 72-pin DIMM sockets (ready for EDO or Fast-Page SDRAMs) plus two new 168-pin DIMM sockets that use new high-performance DIMMs. Your choice! A great way to upgrade any system.

Sorry—As prices are always changing on CPUs, we do not offer price protection in the event prices rise or fall. Returns for defective exchanges only.

Genuine Intel Pentium MMX Motherboard Upgrades!



With New DIMM Memory Slots!

Take advantage of DIMM's faster 64-bit transfer rates—the size of SDRAM's 32-bit systems. And the motherboard has 2 DIMM slots and 2 DIMM slots for conversion flexibility.

Today's Most Advanced Pentium MMX Motherboard! FREE Tech Support!

Next Day Delivery! • Order Today 1-800-333-4033 • 24-hours, 7 days

Exhibit B

Complaint

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EXHIBIT C

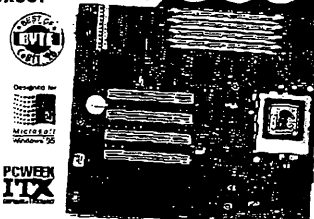
From Tiger CPU by IBM!

The P200+ 6x86! FROM JUST \$399⁹⁹

Replace Your Motherboard With A New 6x86!

Put this new motherboard with 6x86 processor into your case for a difference you can see and feel. It beats upgrading a 486 motherboard with a new processor many times over. For starters, you'll get the high-performance speed of a new 6x86 processor, which we benchmarked to be the best processor for running DOS, Windows 3.1 and Windows 95 applications. You'll also get the high-performance advantages of a true, next-generation 64-bit motherboard. (A 486 motherboard is only 32-bit.) The onboard Enhanced IDE Controller supports four drives, including the fastest Mode 4 EIDE hard disks and IDE CD-ROM drives. The two onboard 16550 serial ports are ideal for the fastest 28.8K modems, and the ECP/EPP parallel port makes printing many times faster than earlier parallel ports. Runs with processors

up to 200MHz! Plug-and-Play BIOS makes adding new adapters and new hard disks as easy as clicking "Auto-Detect". Comes with 256K of pipelined burst SRAM, four 72-pin SIMM slots, 4 PCI slots, 3 ISA slots, ZIP socket with 686 CPU, EIDE Controller, Floppy controller, 2 serial ports and 1 parallel port. Standard Baby-AT size motherboard fits standard cases. Takes just minutes!

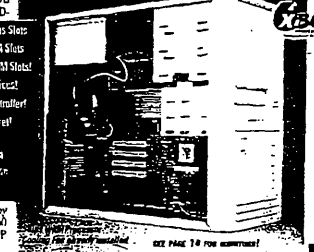


2 Upgrade; Case, Motherboard, Power Supply!

Does the idea of a great-looking mid-tower case to house your new high-performance 6x86 system appeal to you? Then this Upgrade Kit is what you've been looking for. It comes ready for you to install your drives, video card and memory—which is easier than you might think. We'll even show you how! This roomy case has three full-height external bays for your CD-ROM drive, 3.5-inch floppy drive and more. The two half-height external bays are for your 3.5-inch floppy, etc., plus there's another half-height internal bay for your hard disk. And the heavy-duty, 200-watt power supply will reliably power them all. All you need to add is memory, a video card, floppy drive, hard disk, mouse and keyboard. The motherboard has four 72-pin SIMM slots and supports standard Fast-Page RAM plus super-fast EDO RAM. With four high-performance PCI slots and three industry-standard ISA slots, adding a video card couldn't be easier. And with the latest BIOS setup, adding a hard disk is simply a matter of clicking "Auto-

Detect". The onboard I/O Controller supports up to four Enhanced IDE devices, which not only include old and new IDE hard drives, but also IDE CD-ROM drives. Team up this local bus Controller with a new Enhanced IDE, Mode 4 hard drive and you'll really notice the difference—that 22MB/sec. transfer rates can make, SIX times faster than earlier hard disks. You also get an onboard floppy controller, two high-speed (6553) serial ports and a fast ECP/EPP parallel port.

Simply Replace Your Hard Drive, Video Card And Peripheral! Takes About An Hour! Super QSB Performance Fully Compatible! (Giant Cache! Runs On Any Network!) Includes: Case, Motherboard, Case Chk. I/O Controller, Cooling Fan, Power Supply.



3 Complete Ready-To-Run 6x86 With Case, Keyboard, Mouse, Speakers!

Just plug it in—and start Windows 95 on Tiger's best computer! Your choice of processor speeds, 1, 15 or 32 MB of ultra-fast EDO RAM, the fastest IDE Mode 4 hard drive in 1.3, 1.0 or 2.0 gigabyte size, 28.8K Internetworker modem, Windows 95 keyboard, 3-button mouse, 64-bit PCI video with 1.2 or 4 MB of video memory, 16-bit multimedia stereo sound system, stereo speakers, 3.5-inch floppy drive, mid-tower case and AT/XT-ROM (6x on P200+ model). Also includes Windows 95 pre-installed. This is a complete multimedia PC with our fastest Windows processor! It's everything you need for multimedia CD-ROMs, stunning game action, the fastest Windows applications anywhere are right here—wait a price that can't be beat. Just look at the chart below and pick the speed and configuration you want: P133+, P150+, P166+, or the new, blazingly fast P200+!



Choose From Four Screaming Speeds:

Speeds Available: P133+, P150+, P166+ and P200+. Experience the super-performance of the Tiger's 6x86—the world's fastest computer—manufactured by IBM. For ready-to-run convenience right out of the box, get the 6x86 Complete System with Windows 95 pre-installed. For do-it-yourselfers, choose from the Motherboard Only (with 6x86 processor), or the Upgrade Kit (consisting of a motherboard (with 6x86 processor) installed in our roomy mid-tower case. Call for more information.

Model	Processor	RAM	Hard Drive	Modem	Keyboard	Mouse	Speakers	Case	Price
6x86-P133+	133MHz	16MB	1.3GB	28.8K	Yes	Yes	Yes	Yes	\$499.99
6x86-P150+	150MHz	16MB	1.3GB	28.8K	Yes	Yes	Yes	Yes	\$549.99
6x86-P166+	166MHz	16MB	1.3GB	28.8K	Yes	Yes	Yes	Yes	\$599.99
6x86-P200+	200MHz	16MB	1.3GB	28.8K	Yes	Yes	Yes	Yes	\$649.99

Exhibit C

TIGER DIRECT, INC.

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Complaint

EXHIBIT D



Tiger

Exhibit D

Warranty

Your Serial #



Nationwide Service

1-(905)-669-8699

(Important document. Keep in a safe place)



Complaint

128 F.T.C.

EXHIBIT D

WARRANTY CERTIFICATE

Terms and Conditions

This Certificate sets forth the terms and conditions to which AEGIS will provide "On-Site" service ("Service") on the specific equipment ("Equipment") and related as eligible for "On-Site" warranty service on the Invoice ("Invoice"). Service shall consist of labor and parts furnished by AEGIS or its authorized service provider necessary to return the Equipment to normal operating conditions in accordance with Equipment specifications and/or descriptions.

TERMS

This Warranty shall commence upon the Purchase date and shall continue for twelve (12) months.

SERVICES PROVIDED

The Services provided hereunder are only available for the specific equipment as indicated on the Invoice. AEGIS or its authorized service provider shall use its reasonable skills to provide Service, but will not be responsible for delays or failure to provide Service due to factors beyond its control. Service requests must be received by AEGIS or its authorized service provider within the time specified in the Equipment specifications. AEGIS or its authorized service provider shall be authorized to remove or replace parts as may be required to provide Service. All replaced parts shall become the property of AEGIS. AEGIS or its authorized service provider reserves the right to charge Customer at AEGIS' then current rates for consumable parts or other parts required by customer such as oils, greases, lubricants, repair products, solvents, tools, spacers, hardware, burned or damaged parts in CMTY and labor. Service shall be provided during the hours from 8:00am to 5:00pm EST, Monday through Friday, exclusive of statutory holidays ("Normal Hours"). Unless Customer pays for extended coverage.

SERVICE LIMITATIONS

The following services are outside the scope of Service and will, upon Customer's request, be furnished by AEGIS on an as-available basis at AEGIS or its authorized service provider's then current time and materials charges: (a) any request for Service outside of normal hours; (b) repairs, replacements or adjustments or hardware service time required as a result of improper installation or software setup failure by AEGIS; (c) any cause external to the Equipment, including but not limited to any act of God, lightning or power surge, flood, shock, negligence, accident or failure to maintain the proper operating environment; (d) installation, alterations, adjustments or service made or performed by persons other than AEGIS; (e) use of equipment, programs, attachments or devices not approved by AEGIS; and (f) repair, replacement or adjustments or increased service time due to software or software viruses.

WARRANTY LIMITATION

THERE ARE NO OTHER WARRANTIES ON CONDITIONS RESPECTING THE EQUIPMENT, EXPRESS OR IMPLIED, AND AEGIS EXPRESSLY DISCLAIMS ANY WARRANTY ON CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

CUSTOMER'S OBLIGATIONS

Customer must maintain Equipment in a good operating environment, including proper electrical supply, in accordance with manufacturer's instructions, including cleaning. The customer shall be responsible for all proper packaging, freight and insurance charges to and from AEGIS authorized equal location. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ADEQUATE BACK UP OF ALL FILES ON A DAILY BASIS.

WHEN SERVICE IS NEEDED

Please call 1-905-669-8699 when you require service. Please retain this Warranty Certificate as evidence of your coverage.

OUT-OF-SCOPE SERVICES

Any other services performed by AEGIS at Customer's request which are outside the scope of Service or travel packages for any Customer shall be charged to Customer by AEGIS or its authorized service provider and paid within ten (10) days of Customer's receipt of the Invoice.

LIMITATION OF LIABILITY

IN NO EVENT SHALL AEGIS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS AND PROFITS.

GENERAL

Customer may not assign this Certificate without AEGIS' prior written consent. All notices hereunder shall be in writing addressed to the parties at their respective addresses set forth on the Invoice. This Certificate is the complete agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, printed and otherwise, whether oral or written, between the parties. No term of conditions hereof shall be deemed waived and no breach or default assumed unless such waiver or excuse shall be in writing and signed by the party to be charged. In the event that any one or more provisions contained in this Agreement should be held to be unenforceable, its unenforceability shall not affect any other provisions of the Agreement.

FOR SERVICE, CALL:

1-905-669-8699

000230

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 that the Boston Regional Office 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 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 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, and having duly considered the comments received from interested persons pursuant to Section 2.34 of its Rules, 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 Tiger Direct, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida with its office or principal place of business located at 8700 West Flagler Street, 4th Floor, Miami, Florida.

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. 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. Unless otherwise specified, "*respondent*" shall mean Tiger Direct, Inc., a corporation, its successors, assigns, officers, agents, representatives, and employees.

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

4. "*On-Site Service*" shall mean providing the services of a qualified technician at the location of a product sold or supplied by respondent to remedy a problem with the product.

5. "*Clearly and prominently*" shall mean as follows:

A. In an advertisement communicated through electronic medium (such as television, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video 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 video 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. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instruction 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. In multipage documents, the disclosure shall appear on the cover or first page.

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.

6. "*Reasonable period of time*" shall mean that period of time specified in respondent's advertisements, promotional materials or solicitations if such period is clearly and prominently disclosed in the advertisement, promotional material or other solicitation; or if no period of time is clearly and conspicuously disclosed in the advertisement, promotional material or other solicitation, a period no longer than thirty (30) days following the date the respondent first receives notice from the consumer of a problem with a product.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, sale, offering for sale or distribution of any consumer product, shall not represent, in any manner, expressly or by implication, that it provides On-Site Service unless respondent discloses, clearly and prominently and in close proximity to the representation, all limitations and conditions that apply to obtaining On-Site Service.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, sale, offering for sale or distribution of any consumer product for which the respondent offers a written warranty, shall within a reasonable period of time after receiving notice from a consumer of a problem, fulfill its obligations under the warranty to the consumer.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, promotion, sale, offering for sale or distribution of

any consumer product for which the respondent offers a written warranty, do forthwith cease and desist from:

A. 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);

B. Failing to disclose, as provided in Section 701.3(a)(3) of the Disclosure Rule, 16 CFR 701.3(a)(3), a statement of what the warrantor will not pay for or provide, where necessary for clarification;

C. Failing to disclose, as provided in Section 701.3(a)(5) of the Disclosure Rule, 16 CFR 701.3(a)(5), a step-by-step explanation of the procedure the consumer should follow in order to obtain performance of any warranty obligation, including the persons or class of persons authorized to perform warranty obligations;

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

E. Failing to disclose, as provided in 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;

F. Failing to designate, as provided in Section 103 of the Warranty Act, 15 U.S.C. 2303, any written warranty that it offers for products costing more than \$10 as either "full" or "limited"; and

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

IV.

It is further ordered, That respondent 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, and shall secure from each such person a signed and dated statement acknowledging receipt of the 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.

V.

It is further ordered, That respondent shall provide written instructions to all current and future managers, 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 this order and under the Magnuson-Moss Warranty Act (15 U.S.C. 2301, *et seq.*), including, but not limited to, Sections 103 and 108 (15 U.S.C. 2303 and 2308), thereof, and Rules 701 and 702, 16 CFR Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder. Respondent shall provide these instructions 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.

VI.

It is further ordered, That respondent shall, for a period of ten (10) 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 managers, employees, agents, and representatives having any sales, advertising, customer service, or policy responsibility on behalf of respondent pursuant to Part V., 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.

VII.

It is further ordered, That respondent 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, Washington, D.C. 20580.

VIII.

It is further ordered, That respondent shall, within sixty (60) days after the date of 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 it has complied with this order.

IX.

This order will terminate on November 4, 2019, 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.

IN THE MATTER OF

THE KROGER CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3905. Complaint, Nov. 8, 1999--Decision, Nov. 8, 1999*

This consent order, among other things, requires Kroger and Groub, supermarket corporations, to divest certain assets to Roundy's, Inc., which is one of the largest food wholesalers in the United States and an operator of company-owned supermarkets.

Participants

For the Commission: *Michael Rose, Laurel Price, Richard Parker, Jeremy Bulow and Alan Fisher.*

For the respondents: *Deborah Feinstein, Arnold & Porter, Washington, D.C. and Eric Moy, Barnes & Thornburg, Indianapolis, IN.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent The Kroger Co. ("Kroger") has entered into an agreement to acquire substantially all of the assets of respondent The John C. Groub Company, Inc. ("Groub"), all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

DEFINITION

PARAGRAPH 1. For the purposes of this complaint, the term "Supermarket" means a full-line retail grocery store with annual sales of at least \$2 million that carries a wide variety of food and grocery