

## Complaint

**IN THE MATTER OF**  
**MEMTEK PRODUCTS, INC.**

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

*Docket C-3927; File No. 9923114*  
*Complaint, February 17, 2000--Decision, February 17, 2000*

This consent order prohibits Respondent, Memtek Products, Inc., from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards purchases will be mailed to purchasers. It also prohibits Respondent from failing to provide any offered rebate within the promised time specified, or if no time is specified, within thirty days. The consent order also prohibits Respondent from violating the Commission's Mail Order Rule which also prohibits marketers from failing to provide rebates in the form of merchandise or service for products within specified time or, if time is not specified, within thirty days unless they offer consumers the option of consenting to the delay and receiving compensation for the offered rebate.

*Participants*

For the Commission: *Michael Dershowitz, Michael*  
*Ostheimer, Mark Eichorn, C. Lee Peeler, and BE.*

For the Respondents: *Robert A. Padway, Bullivant Houser*  
*Bailey.*

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Memtek Products, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

## Complaint

1. Respondent Memtek Products, Inc., is a California corporation with its principal office or place of business at 10100 Pioneer Blvd., Santa Fe Springs, CA 90670.

2. Respondent has repackaged, advertised, labeled, offered for sale, sold, and distributed products to the public, including Memorex computer diskettes and blank audiotapes and videotapes.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated labeling and rebate coupons for packages of Memorex computer diskettes, including but not necessarily limited to the attached Exhibits A and B. The labeling and rebate coupons contain the following statements:

A.

" \$15 REBATE  
With Proof of Purchase"

"Please allow 12 weeks  
for delivery."

(Exhibit A, front of label  
attached to packages of  
Memorex computer  
diskettes).

(Exhibit A, back of label  
attached to packages of  
Memorex computer  
diskettes)

B.

"29.<sup>99</sup> Rebate by Mail  
on specially marked  
100 Pack Diskettes  
Purchased at Staples"

(Exhibit B, front of  
rebate coupon for

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Memorex computer  
diskettes).

. . .

Please allow 12 weeks for  
delivery."

"Buy a Memorex MXR 100  
Pack Diskettes  
(Part#3210-5430) and Bulk  
100 Pack Diskettes  
(Part# 3210-5400)

(Exhibit B, back of rebate  
coupon for Memorex  
computer diskettes).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that purchasers of packages of Memorex computer diskettes would receive cash rebates within 12 weeks of respondent's receipt of their requests.

6. In truth and in fact, in numerous instances, purchasers of packages of Memorex computer diskettes did not receive cash rebates within 12 weeks of respondent's receipt of their requests. In many instances, consumers experienced delays of one to two months in receiving their cash rebates. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. Respondent has disseminated or has caused to be disseminated labeling for packages of blank Memorex audiotapes and videotapes, including but not necessarily limited to the attached Exhibit C. The labeling contains the following statements:

C.  
"BUY THIS  
MEMOREX PRODUCT  
AND RECEIVE A \$10  
Best Buy Gift Check  
(by mail)

Good for purchase at  
Best Buy of any pre-  
recorded video tape or  
music CD."

## Complaint

(Exhibit C, front of label attached to packages of blank Memorex audiotapes and videotapes).

"Please allow 8 weeks for delivery."

(Exhibit C, back of label attached to packages of blank Memorex audiotapes and videotapes).

8. Through the means described in Paragraph 7, respondent has represented, expressly or by implication, that purchasers of packages of blank Memorex audiotapes and videotapes would receive \$10 Best Buy gift checks, entitling them to a \$10 discount off a future purchase from Best Buy retail stores of any pre-recorded videotape or music CD, within 8 weeks of respondent's receipt of their requests.

9. In truth and in fact, in numerous instances, purchasers of packages of blank Memorex audiotapes and videotapes did not receive \$10 Best Buy gift checks within 8 weeks of respondent's receipt of their requests. In many instances, consumers experienced delays of one to three months in receiving their \$10 Best Buy gift checks. Therefore, the representation set forth in Paragraph 8 was, and is, false or misleading.

10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

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

By the Commission.

## Complaint Exhibits

## Exhibit A

|                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><b>BUY:</b> A specially marked Memorex 50 Pack (UPC 034707-004146, 036857 037143).</p> <p><b>MAIL:</b> 1) UPC symbol cut from the package. 2) Original cash register receipt with date and purchase price circled. 3) This original rebate sticker from front of package. 4) Print your name, address and zip code on a 3"x5" card.</p> <p><b>SEND TO:</b> Memorex 50 Pack Rebate Offer, P.O. BOX 52945, Dept. 5672, Phoenix, Arizona 85072-2945.</p> <p><b>ADDITIONAL TERMS OF OFFER:</b> Limit 2 refunds per name, household or address. Offer void where prohibited by law, taxed, licensed or restricted. Please allow 12 weeks for delivery. Offer good only in the U.S.A. Request must be postmarked within 30 days of date of purchase. This offer not to be used in conjunction with any other offer. Offer good while supplies last.</p> <p>53953920</p> |
|-----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Exhibit A, enlarged

## Complaint Exhibits

## Exhibit B

**\$29.<sup>99</sup> Rebate by Mail**

**on specially  
marked  
100 Pack Diskettes  
Purchased at Staples**

Must complete purchase between 1/11/98 thru 1/18/98  
limit 1 refund per name, household or address.  
Requests must be post marked 2/1/98

**Here's How To Receive Your Memorex Rebate:**

1. Buy a Memorex MPX100 Pack Diskettes (Part#3210-5430) and Bulk 100 Pack Diskettes (Part#3210-5400)
2. Mail the UPC symbol from the original package and the Staples cash register receipt as proof of purchase. Please show date and purchase price.
3. Mail these required items, along with this completed request, to:  
Memorex MPX100 Pack Diskettes and Bulk 100 Pack Diskettes Rebate  
P.O. BOX 52665, Dept 1754, Phoenix, AZ 85072-2645
4. In order to properly redeem your request please print the following information:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Additional Terms of Offer:  
Must complete purchase by 1/18/98. Request must be postmarked by 2/1/98. This complete form must accompany request and may not be mechanically reproduced (print) without permission. Household address only. Please allow 12 weeks for delivery. Void where prohibited by law, taxed, licensed or restricted. Group and organizational requests will not be honored. Offer good only in the USA. Not responsible for legal or misdirected mail. Incomplete redemption requests will not be honored. This offer not to be used in conjunction with any other offer. Offer good while supplies last.  
For questions regarding the status of your rebate, please call 1-800-254-4315

P00298

Exhibit B, enlarged

## Complaint Exhibits

## Exhibit C



**BUY:** A specially marked MS™ 10 9-pt, dBS-90 20-pt, or CD2-110 10-pt (UPCA 071809-181917-320200, 411106)

**MAIL:** 1) UPC symbol cut from the outside package wrap; 2) Original cash register receipt (or copy) from Best Buy with date and purchase price circled; 3) This original rebate sticker from front of package; 4) Print your name, address and zip code on a 3"x5" card.

**SEND TO:** \$10 Best Buy Gift Check Offer  
P.O. BOX 8864, Young America, MN 55551

**ADDITIONAL TERMS OF OFFER:** Offer good on purchases made through 6/30/99. Requests must be postmarked by 7/15/99. Limit 3 refunds per name, household or address. Offer void where prohibited by law, taxed, licensed or restricted. Please allow 8 weeks for delivery. Offer good only in the U.S.A. Not responsible for lost or misdirected mail. Incomplete redemption requests will not be honored. This offer not to be used in conjunction with any other offer. Offer good while supply lasts. 500018

Exhibit C, enlarged

## Decision and Order

**DECISION AND ORDER**

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Memtek Products, Inc. is a California corporation with its principal office or place of business at 10100 Pioneer Boulevard, Santa Fe Springs, CA 90670.

## Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

## DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Rebate" shall mean cash, credit towards future purchases, merchandise, services, or any other consideration offered by respondent to consumers who purchase products or services from respondent, which is provided subsequent to the purchase.
2. Unless otherwise specified, "respondent" shall mean Memtek Products, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Mail Order Rule" shall mean the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended.
4. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

**I.**

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with respondent's manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not:

## Decision and Order

- A. misrepresent, in any manner, expressly or by implication, the time in which any rebate in the form of cash or credit towards future purchases will be mailed, or otherwise provided to purchasers;
- B. fail to provide any rebate in the form of cash within the time specified, or, if no time is specified, within thirty days;
- C. fail to provide any rebate in the form of credit towards future purchases within the time specified, or, if no time is specified, within thirty days;
- D. in connection with any rebate in the form of merchandise, violate any provision of the Mail Order Rule, including failing to provide the rebate within the time specified, or, if no time is specified, within thirty days, unless respondent offers to the purchaser the option of either:
  - 1. consenting to the delay; or
  - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered; or
- E. fail to provide any rebate in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time specified, or, if no time is specified, within thirty days, unless respondent offers to the purchaser the option of either:
  - 1. consenting to the delay; or
  - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

## Decision and Order

**II.**

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall for five (5) years after the last date of dissemination of any representation covered by this order maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All respondent's advertisements and promotional materials containing such representation;
- B. All materials that were relied upon by respondent in disseminating such representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

**III.**

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

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**IV.**

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**V.**

IT IS FURTHER ORDERED that respondent Memtek Products, Inc., and its successors and assigns shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

**VI.**

This order will terminate on February 17, 2020, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any

## Analysis to Aid Public Comment

violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from respondent Memtek Products, Inc. ("Memtek").

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will

## Analysis to Aid Public Comment

decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Memtek repackages, advertises, labels and sells, among other products, "Memorex" brand computer diskettes, and blank audiotapes and videotapes. This matter concerns allegedly deceptive rebate advertising claims made in conjunction with the sale of these products. The Commission's proposed complaint alleges that Memtek falsely represented that purchasers of its package of 100 computer diskettes would receive a \$29.99 cash rebate within 12 weeks of Memtek's receipt of purchasers' rebate requests. The complaint alleges that in many instances purchasers received their rebates one to two months late. The complaint also alleges that Memtek falsely represented that purchasers of its blank audiotapes and videotapes would receive a \$10 Best Buy Gift Check within 8 weeks of Memtek's receipt of purchasers' gift check requests. The \$10 Gift Check could then be used at any Best Buy retail store to obtain \$10 off the purchase of any pre-recorded videotape or music CD. The complaint alleges that in many instances purchasers received their \$10 Gift Checks one to three months late.

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

Part I of the proposed order prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the FTC's Mail Order Rule in connection with rebates in the form of merchandise. Among other

## Analysis to Aid Public Comment

things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the merchandise originally offered. Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time it specifies for delivery, or if no time is specified, within thirty days, unless it offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Part II of the proposed order requires respondent to maintain copies of all materials relied upon in making any representation covered by this order.

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

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

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

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

## Analysis to Aid Public Comment

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

## Complaint

**IN THE MATTER OF**  
  
**UMAX TECHNOLOGIES, INC.****CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF  
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT**

*Docket C-3928; File No. 9923242*  
*Complaint, February 17, 2000--Decision, February 17, 2000*

This consent order prohibits Respondent, UMAX Technologies, Inc., from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards purchases will be mailed to purchasers. It also prohibits Respondent from failing to provide any offered rebate within the promised time specified, or if no time is specified, within thirty days. The consent order also prohibits Respondent from violating the Commission's Mail Order Rule which also prohibits marketers from failing to provide rebates in the form of merchandise or service for products within specified time or, if time is not specified, within thirty days unless they offer consumers the option of consenting to the delay and receiving compensation for the offered rebate.

*Participants*

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

For the Respondents: *Joe Q. Kaufman, UMAX Technologies, Inc.*

**COMPLAINT**

The Federal Trade Commission, having reason to believe that UMAX Technologies, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent UMAX Technologies, Inc., is a California corporation with its principal office or place of business at 3561 Gateway Boulevard, Fremont, California 94538.