

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.

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2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to the public, including computer scanners.

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 computer scanners, including but not necessarily limited to the attached Exhibits A and B. The labeling and rebate coupons contain the following statements:

A. "Astra 1220P \$30 Rebate"

"Please allow 10 to 12 weeks to receive your rebate."

(Exhibit A, label attached to packaging of Astra 1220P scanners).

B.

" UMAX
Astra 1220S
\$50 Rebate"

"Please allow 10 to 12
weeks to receive your
rebate."

(Exhibit B, front of rebate
coupon for Astra 1200S
scanners).

(Exhibit B, back of rebate
coupon for Astra 1200S
scanners).

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

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

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

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

By the Commission.

Complaint Exhibits

Exhibit A

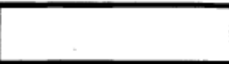
EXHIBIT A

PEEL OFF Astra 1220P \$30 Rebate					
To receive your rebate you must mail in: *Complete original bar code *Label cut out of your scanner box *A copy of your sales receipt *This completed claim coupon.	<table border="1" style="width: 100%;"> <tr><td style="padding: 2px;">Name _____</td></tr> <tr><td style="padding: 2px;">Address _____</td></tr> <tr><td style="padding: 2px;">City _____ State _____ ZIP _____</td></tr> <tr><td style="padding: 2px;">Tel: _____</td></tr> </table>	Name _____	Address _____	City _____ State _____ ZIP _____	Tel: _____
Name _____					
Address _____					
City _____ State _____ ZIP _____					
Tel: _____					
Mail to: UMAX Astra 1220P Rebate Department 0463 1421 S. Beltline Rd. Ste. 400 Coppell, TX 75019	Rebate applies to the Astra 1220P scanner only. Purchase must be made between October 1, 1998 and February 28, 1999. All requests MUST be postmarked by March 15, 1999. Offer not valid with any other offers, rebates or promotions. Offer valid in US and Canada only. Good for actual purchases by end users; excludes resellers and distributors of UMAX products and their families. Please allow 30 to 12 weeks to receive your rebate. All rebates will be made in US Dollars. UMAX is not responsible for lost or misdirected mail and illegible entries. UMAX logo and product names are trademarks of UMAX. Fraudulent submission of multiple requests could result in federal prosecution under the U.S. Mail Fraud Statutes (18 U.S.C. Section 1341 & 1342). Keep a copy of your submission for your future reference. UMAX reserves the right to rescind and/or change promotional offer at any time.				
If you have not received your rebate or have questions please call the rebate hotline at: 1-800-724-9273 wmin.UMAX.com					

Complaint Exhibits

Exhibit B

EXHIBIT B

 Astra 1200S \$50 Rebate	
Purchase an Astra 1200S-DLX or an Astra 1200s-LE between October 1, 1998 and December 31, 1998 and become eligible for a \$50 mail-in rebate from UMAX. See complete rules and regulations on back.	
See the reverse side of this coupon for complete details on how to submit your claim. Mail all required claim information to:	If you have not received your rebate or have questions please call the rebate hotline at: 1-888-724-9273
UMAX 1200S Rebate Department # 462 2924 N. Skyway Circle Irving, TX. 75038	www.UMAX.com

(FRONT)

 Astra 1200S-DLX & LE \$50 Rebate	
Mail this completed coupon along with a copy of your receipt and the UPC/Serial Number label out from the side of your scanner box to become eligible for a \$50 Mail-in rebate.	Name _____ Address _____ City _____ State _____ ZIP _____ Tel: _____
Select the UMAX product purchased: ☐ Astra 1200S-DLX valid UPC is 785461134005 ☐ Astra 1200s-LE valid UPC is 785461133985 Please check one selection	Rebate applies to the Astra 1200S-DLX and 1200s-LE scanner only. Purchase MUST be made between October 1, 1998 and December 31, 1998. All requests MUST be postmarked by January 15, 1999. Offer not valid with any other offers or promotions. Offer valid in US and Canada only. Good for actual purchases by end users; excludes resellers and distributors of UMAX products and their families. Please allow 10 to 12 weeks to receive your rebate. All rebates will be made in US Dollars. UMAX is not responsible for lost or misdirected mail and illegible entries. UMAX logo and product names are trademarks of UMAX. Fraudulent submission of multiple requests could result in federal prosecution under the U.S. Mail Fraud Statutes (18 USC Section 1341 & 1342). Keep a copy of your submission for your future reference. UMAX reserves the right to rescind and/or change promotional offer at any time.
www.UMAX.com	

(BACK)

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

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 to consumers who purchase products or services from respondent, which is provided subsequent to the purchase.
2. Unless otherwise specified, "respondent" shall mean UMAX Technologies, 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 the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not:

- A. misrepresent, in any manner, expressly or by implication, the time in which any rebate in the form of cash or credit

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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.

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II.

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

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the 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 UMAX Technologies, Inc., and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

Decision and Order

IV.

IT IS FURTHER ORDERED that respondent UMAX Technologies, 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 UMAX Technologies, 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

Analysis to Aid Public Comment

accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

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

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

By the Commission.

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 UMAX Technologies, Inc. ("UMAX").

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

Analysis to Aid Public Comment

again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

UMAX advertises, labels and sells various types of computer scanners. This matter concerns allegedly deceptive rebate advertising claims made in conjunction with the sale of computer scanners. The Commission's proposed complaint alleges that UMAX falsely represented that purchasers of its Astra 1220P scanner, for example, would receive a \$30.00 cash rebate, and that purchasers of its Astra 1220S scanner, for example, would receive a \$50.00 cash rebate, within 12 weeks of UMAX's receipt of purchasers' rebate requests. The complaint alleges that in many instances purchasers received their rebates one to five 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 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.

Analysis to Aid Public Comment

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.

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.

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IN THE MATTER OF
DBC FINANCIAL, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket C-3931; File No. 9923228
Complaint, March 13, 2000--Decision, March 13, 2000

This consent order prohibits Respondent DBC Financial, Inc. in connection with the advertising or sale of Delaware Bank Card or any back card or related services from making and misrepresentations or material omissions regarding the costs, benefits, or conditions of a bank card or related services including that 1) that the card has no up-front fees if there is an Account set-up fee or other initial charge, 2) that the card provides over-draft protection free of charge if there is an over-draft protection fee. The consent order also prohibits respondent from making misrepresentations in connection with the advertising and sale of bank card or related services of any connection or affiliation with any United States government agency, institution, or program. The consent order also requires that Respondent conspicuously disclose in connection, in connection with any representation about the availability of electronic fund transfers from any government entity "NOTICE: The [Delaware Bank Card or Name of Bank Card] is NOT affiliated in any way with any federal government agency or program". The order requires Respondent to pay \$250,000.00 for a redress program and administrative costs.

Participants

For the Commission: *Rolando Berrelez, Michelle Chua,*
Jessica Rich, David Medine.

For the Respondents: *Sylvia Kochler, Nelson Mullins Riley &*
Scarborough, LLP.