

Complaint

IN THE MATTER OF

BUY.COM INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3978; File No. 9923282**Complaint, September 5, 2000--Decision, September 5, 2000*

This consent order addresses BUY.COM's advertising claims regarding the sale of a \$269 Compaq Presario 5304 computer system based upon a \$400 rebate that required consumers to enter into a three year contract for Internet service. The complaint alleges that BUY.COM represented that the total cost of the computer system was \$269, but failed to disclose pertinent requirements and rebates necessary to purchase at the advertised price. The consent order prohibits BUY.COM from misrepresenting the price or cost to consumers of computer or computer related equipment, or from representing the cost of any of these products if that price is conditioned on the purchase of another product without disclosing the condition clearly and conspicuously along with the price of the additional product or service that must be purchased. The order also prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts. Additionally, the order prohibits Respondent from making any representation about the cost of Internet access services unless it discloses the following material facts: (1) if consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service; (2) the amounts of such costs must be disclosed; (3) if consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service; (4) the amount of time required for purchasers to receive any rebate. These disclosures can be made through hyperlinks if the hyperlink clearly indicated the nature and importance of the information included.

Participants

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

Complaint

For the Respondents: *Michael B. Green, Brobeck, Phleger, & Harrison.*

COMPLAINT

The Federal Trade Commission, having reason to believe that BUY.COM 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 BUY.COM Inc. is a Delaware corporation with its principal office or place of business at 85 Enterprise, Aliso Viejo, California 92656.
2. Respondent has advertised, offered for sale, sold, and distributed products to the public, including books, music and video recordings, personal electronic devices, computer software, and personal computers. BUY.COM sells these products through its Internet Web site, <www.buy.com>.
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 advertisements for a Compaq Presario 5304 computer system, including but not necessarily limited to the attached Exhibits A through C. Exhibit A is a newspaper advertisement. Exhibit B is a subsequent newspaper and magazine advertisement. Exhibit C is a Web site advertisement. The advertisements contain the following statements:

A.

[Depiction: A Compaq Presario 5304 computer system.]

"COMPAQ PRESARIO 5304 SYSTEM

Complaint

WITH REBATES, INCLUDES 15" MONITOR, SPEAKERS,
COLOR INKJET PRINTER, KEYBOARD,
MOUSE, AND FREE SHIPPING. VISIT WWW.BUY.COM
TODAY FOR REBATE DETAILS.

\$269

CAN YOU FIND
THE TYPPO
IN THIS AD?"

[An extremely fine print disclosure, in approximately 4 point type, at the very top of the ad states:

"BUY.COM,J BUYCOMP.COM,J BUYSOFT.COM,J
BUYBOOKS.COM,J BUYVIDEOS.COM,J
BUYGAMES.COM,J BUYMUSIC.COM,J and
BUYSURPLUS.COMJ are trademarks or servicemarks of
BUY.COM Inc. Prices subject to change. Quantities limited.
Requires Compuserve activation. See site for details.
Buy.com reserves the right to cancel this offer at any time.
81999"]

(Exhibit A, Full page newspaper advertisement that appeared in USA Today, The Washington Post, The New York Times, The Sacramento Bee, The San Jose Mercury News, and The Wall Street Journal.)

B.

[Depiction: A Compaq Presario 5304 computer system.]

"COMPAQ PRESARIO 5304 SYSTEM

WITH REBATES, INCLUDES 15" MONITOR, SPEAKERS,
COLOR INKJET PRINTER, KEYBOARD,

Complaint

MOUSE, AND FREE SHIPPING. REQUIRES 36-MONTH
COMPUERVE 2000 PREMIER INTERNET SERVICE
CONTRACT AT \$21.95 PER MONTH. VISIT
WWW.BUY.COM TODAY FOR ALL THE REBATE
DETAILS.

\$269*

CAN YOU FIND
THE TYPPO
IN THIS AD?"

[A very fine print disclosure, in approximately 5 point type, at the very top of the ad states:

"*BUY.COM,J BUYCOMP.COM,J BUYSOFT.COM,J
BUYBOOKS.COM,J BUYVIDEOS.COM,J
BUYGAMES.COM,J BUYMUSIC.COM,J and
BUYSURPLUS.COMJ are trademarks or servicemarks of
BUY.COM Inc. Prices subject to change. Quantities limited.
Complete System \$869.00 - \$400 CompuServe 2000 Premier
Internet Mail-in Rebate - \$200 Compaq Bundle Mail-in
Rebate. Requires 36 months of Compuserve 2000 Internet
service at \$21.95 a month. Early cancellation may result in
additional charges. See site for details. BUY.COM reserves
the right to cancel this offer at any time. 1999"]

(Exhibit B, Full page newspaper and magazine advertisement that
appeared in The Wall Street Journal and PC Week Magazine).

C.1.

"BUYCOMP.COM
The Internet Computer Superstore

COMPAQ

\$269* *[Depiction: A Compaq Presario 5304
FREE Ground Shipping! computer system]*

Complaint

* After rebates

A Complete System \$269.00" [Hyperlink to: Exhibit C.3.]

(Exhibit C.1., The home page of respondent's Web site, <www.buy.com>).

C.2.

"COMPAQ \$269*

[Depiction: A Compaq Presario 5304 computer system] includes: computer, monitor with speakers, and printer.

Click Here Now!
[Hyperlink to: Exhibit C.3.]

FREE Ground Shipping!

***With rebates. Requires three year subscription to CompuServe internet service."**

(Exhibit C.2., The main page of BUYCOMP.COM, the computer section of respondent's Web site, <www.buy.com/comp/default.asp>).

C.3.

"COMPAQ Savings from BUY.COM

[Depiction: A Compaq Presario 5304 computer system.]	System Price	\$869.00
	iSave Rebate	-\$400.00
	5304 Rebate	-\$200.00
	<u>Ground Shipping</u>	\$0.00
	Your Price	\$269.00!

Click Here To Buy

Complaint

[Hyperlink to: Purchase application]

Save a bundle...

when you combine the Compaq iSave \$400 Internet rebate
[Hyperlink to: Exhibit C.4.] with an additional \$200 cash back
[Hyperlink to: Rebate form] from Compaq.

Here's How It Works

1. Order your new Compaq system.
2. Sign up for three years of CompuServe2000 Internet service within 30 days of your purchase).
3. Fill out both the iSave \$400 Internet rebate form
[Hyperlink to: Exhibit C.4.] and the \$200 cash back form
[Hyperlink to: Rebate form] and mail to Compaq. See full details on rebate forms.

Here's What You Get. . ."

(Exhibit C.3., Page of respondent's Web site devoted to Compaq Presario 5304 computer system package offer, <www.buy.com/comp/stores/compaq/600_promo.asp>)

C.4.

"\$400 Rebate (Mail-in Rebate) on the purchase of any Compaq Presario desktop PC and Compaq Monitor or Compaq Presario notebook PC, 7/25-10/9/99. Sign up for 3 years of Compuserve 2000 Premier Internet Service for \$21.95 a month. Mail-in-rebate must be postmarked by 11/30/99.

To redeem this rebate offer, simply:

1. **Purchase** an eligible Compaq product
2. **Sign** up for CompuServe 2000 service using your Compaq/CompuServe CD rebate kit
(CD kits are available from your local authorized reseller)
3. **Fill** in the form, then print it out; or **print** out the blank form, and fill it in by hand
4. **Mail** it to the address below with proof of purchase"

Complaint

[A fine print disclosure at the very bottom of this web page states:

"Terms and Conditions

\$400 Mail-In Rebate requires (1) purchase of any eligible Compaq Presario desktop & monitor or notebook computer, (2) contract commitment to a 3 year (36 months) subscription for CompuServe 2000 Internet Service at the monthly rate of \$21.95 or full prepayment of \$790.20 at the time of registration, (3) a completed mail-in rebate form, and (4) a dated purchase receipt with a copy of your receipt and UPC Code. All of the above must be completed and received by CompuServe within 30 days of purchase. Offer subject to your acceptance of CompuServe Terms of Service. If prepayment is not chosen, membership termination prior to 36 months requires pro-rated repayment of the rebate plus a \$50 cancellation fee, based on the following repayment schedule: Months 1-12/\$400, Months 13-24/\$300.00, and Months 25-36/\$200.00. Within 60 days of rebate approval, the rebate will be credited to your designated credit card or fulfilled by check sent to the name and address provided on the mail-in rebate form. Offer valid in the U.S. only for purchases through 10/9/99. You must be 18 years or older. Limit one per household. A major credit card is required. Premium CompuServe services carry surcharges, and communications surcharges may apply to AK and outside of the U.S. You may incur telephone charges, depending on your calling plan and location. Availability Access to CompuServe may be limited, especially during peak times."]

(Exhibit C.4., Page of respondent=s Web site containing the application form for the iSave \$400 Internet rebate, <www.buy.com/comp/stores/compaq/400_rebate_form.asp>. Consumers could purchase the Compaq Presario 5304 computer system without viewing this page.).

5. Through the means described in Paragraph 4, including but not necessarily limited to Exhibit A, respondent has represented,

Complaint

expressly or by implication, that the total cost of a Compaq Presario 5304 computer system is \$269.

Complaint

6. In truth and in fact, the total cost of a Compaq Presario 5304 computer system is not \$269. In order to obtain the Compaq Presario 5304 computer system for \$269, consumers are required to subscribe to CompuServe 2000 Internet service for 36 months at an additional cost of \$21.95 per month or a full pre-payment of \$790.20. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. In its advertisements, including but not limited to Exhibits A through C, for the Compaq Presario 5304 computer system respondent has represented that the total cost of the Compaq Presario 5304 computer system is \$269 after rebates. In these advertisements, respondent has failed to disclose or failed to disclose adequately:

(a) with respect to Exhibits A and C, that in order to obtain the Compaq Presario 5304 computer system for \$269, consumers are required to subscribe to CompuServe 2000 Internet service for 36 months at an additional cost of \$21.95 per month or a full pre-payment of \$790.20;

(b) with respect to Exhibits A and B, the amounts of the rebates, \$200 and \$400, and the total price of the computer system before rebates, \$869;

(c) that consumers who cancel the Internet service within 3 years must repay all or a portion of the \$400 rebate and pay a \$50 cancellation fee; and

(d) that CompuServe does not provide local access telephone numbers for its Internet service in all areas and, therefore that many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service.

Complaint Exhibits

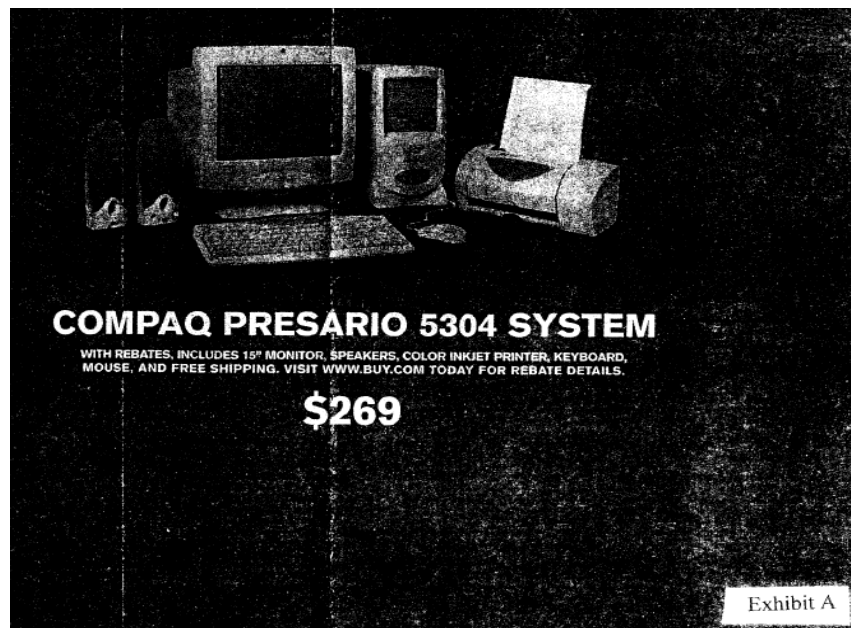
These facts would be material to consumers in their purchase or use of the product. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

8. 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.

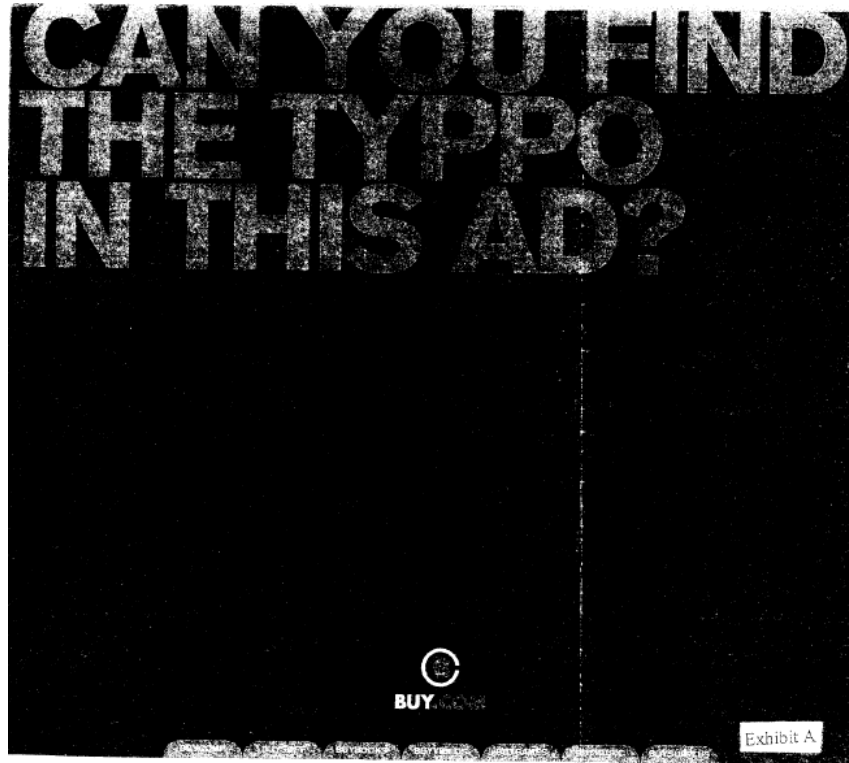
THEREFORE, the Federal Trade Commission this fifth day of September, 2000, has issued this complaint against respondent.

By the Commission.

Complaint Exhibits



Complaint Exhibits



Complaint Exhibits



COMPAQ PRESARIO 5304 SYSTEM
WITH REBATE, INCLUDES 15" MONITOR, SPEAKERS, COLOR INKJET PRINTER, KEYBOARD,
MOUSE, AND FREE SHIPPING. REQUIRES 36-MONTH COMPUSERV 3000 PREMIER INTERNET SERVICE
CONTRACT AT \$21.99 PER MONTH. VISIT WWW.BUY.COM TODAY FOR ALL THE REBATE DETAILS.

\$269*


BUY.COM

BUYCOMP BUYBOOK BUYVIDEO BUYGAMES BUYMUSIC BUYSUPPLIES

Exhibit B

Complaint Exhibits

BUY.COM

Choose a Store:

Choose Store & Enter Keywords:

Home | Feedback | eAccount | Order Tracking | Basket | Checkout

The Internet Superstore Sales / Support - 888.880.1030

Welcome back Ava, If you are not Ava [click here](#)
 Going Back to School? Check out the great deals at our [Back to School Store](#).
 Customer Feedback... [Click Here](#) to read what BUY.COM customers are saying.
 The Lowest Prices On Earth and More...

BUYCOMP.COM
 The Internet Computer Superstore
COMPAQ
\$269
 FREE Ground Shipping
 *After rebate
A Complete System \$269.00

BUYSOFT.COM
 The Internet Software Superstore
 Millennium 2K Solutions
Guaranteed Y2K fix!
 Click Here For More Info & FREE Software Download
A Guaranteed Y2K Solution

BUYMUSIC.COM
 The Internet Music Superstore
 New Top 10
 Coming Rock
 Jazz Rap
 R & B More...
Runaway Bride \$9.95

BUYBOOKS.COM
 The Internet Book Superstore
 NY Times Top 25
 Non-Fiction Fiction
 Audio History
 Computer More...
How the Web Was Won \$18.95

BUYVIDEOS.COM
 The Internet Video Superstore
 DVDs Top 25
 New Coming
 Action Drama
 Family More...
Matrix \$14.49

BUYGAMES.COM
 The Internet Game Superstore
 New Top 25
 Nintendo Sony
 Windows Dreamcast
 Gameboy More...
NFL Blitz 2000 \$49.95

DVDs for \$14.99
 A huge selection of DVDs for \$14.99 or less!

Top Selling CD's for \$9.95
 Billboard's top 25 single disc CD's for \$9.95.

BuySurplus.com Store
 Great prices on home electronics and computer products.

Customer Service
 Need some help? Click here.

Join The BUY.COM Team
 Employment Opportunities at BUY.COM.

More Info On Buy.Com
 Press Releases, Company Info, Address...

Customer Service | FAQs | Site Guide | Company Info | Advertising | Terms | Help

Exhibit C.1

Complaint Exhibits

BUYCOMP.COM

Home | eAccount | eSale | eSearch | Order Tracking | Basket | Checkout

The Internet Computer Superstore

Welcome back Ava, If you are not Ava [click here](#)

COMPAQ **\$269***
includes: computer, monitor with speakers, and printer.
FREE Ground Shipping! Click Here Now!
*With rebates. Requires three year subscription to CompuServe internet service

BuyComp Great Buys [List All](#)

Compaq Presario 5340 \$696.00 [Buy Now](#) [Compare Price](#)
The AMD-K6-2 is the first processor to offer AMD's innovative 3DNow!™ technology, boosting overall performance and providing a superior 3D experience - at an affordable price.

3dfx Voodoo3 3000 AGP 16MB \$135.95 [Buy Now](#)
The 3dfx Voodoo3 3000 is the #1 video card for true game enthusiasts and generates 7 million triangles and 333 Megapixels per second at resolutions of up to 2,046 by 1536 pixels. See Specials Page for rebate details!

Linksys 10/100 PGMCIA Card \$57.95 [Buy Now](#) [Compare Price](#)
\$15.00 REBATE available! See Specials Page. 10/100 Auto-Sensing ports. Supports both 100BaseTX and 10BaseT devices. Full duplex and Speed up to 200MBPS. Supports all major Operating Systems, including Linux! 3 year warranty and Free Tech Support.

SyncMaster 900P 19" \$349.95 [Buy Now](#) [Compare Price](#)

ZIP 100MB USB \$129.95 [Buy Now](#) [Compare Price](#)

24x/6x/4x CD TurboWriter \$202.95 [Buy Now](#) [Compare Price](#)

BuyComp Weekly Specials
Manufacturer Rebates, Cash Back Coupons...

Lowest Prices Guaranteed
We'll beat the computer hardware prices of our internet competitors. Guaranteed.

Shop By Brand
Manufacturer Stores, Iomega, Nokia...

Customer Service
Need some help? Click here.

Join The BUY.COM Team
Employment Opportunities at BUY.COM

More Info On Buy.Com
Press Releases, Company Info, Address...

Customer Service | FAQs | Site Guide | Company Info | Advertising | Terms | Help

Exhibit C.2

Complaint Exhibits

BUY.COM.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq/buy_promo.asp

HOME COMP SOFT BOOKS VIDEOS GAMES MUSIC SURPLUS

BUY.COM.COM

Quick Search or eSearch

SAVE \$975 on aspirin!

Choose Category: Computers Notebooks Software Printers Monitors Scanners Modems Memory Networks Video Cards Peripherals USB Devices Storage / Media Digital / Web Cams Power Protection Hand Held PDAs Macintosh Products

Home | eAccount | eLease | eSearch | Order Tracking | Basket | Checkout

\$269 Compaq System Sales / Support - 888.880.1030

COMPAQ Better answers

COMPAQ Savings from BUY.COM

\$269

System Price	\$869.00
iSave Rebate	-\$400.00
5304 Rebate	-\$200.00
Ground Shipping	\$0.00
Your Price	\$269.00!

[Click Here To Buy](#)

Save a bundle...
when you combine the Compaq iSave \$400 Internet rebate with an additional \$200 cash back from Compaq.

Here's How It Works

1. Order your new Compaq system.
2. Sign up for three years of CompuServe2000 Internet service within 30 days of your purchase.
3. Fill out both the iSave \$400 Internet rebate form and the \$200 cash back form and mail to Compaq. See full details on rebate forms.

Here's What You Get

Presario 5304 Computer

- M II 366 MMX Enhanced Processor
- 64MB Ram
- 4.3GB HD
- 56k Modem
- 32X CD

[BuySystem](#)

Presario MV520 Monitor

- High-quality 0.28mm Dot Pitch
- JBL Pro Amplified Speakers
- Max Res 1024x768
- 15" Monitor (13.8" Viewable)

[BuySystem](#)

Exhibit C.3

Complaint Exhibits

BUYCOMP.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq/600_promo.asp

Compaq IJ300 Inkjet Printer

- Up to 1200 x 1200 dots per inch
- Up to 4 pages per minute black
- Up to 2.5 pages per minute color
- Input tray holds up to 100 sheets
- Output tray holds up to 25 sheets

BuySystem

[Customer Service](#) | [FAQs](#) | [Site Guide](#) | [Company Info](#) | [Advertising](#) | [Terms](#) | [Help](#)

Copyright 1999 BUY.COM Inc., All rights reserved. [BUY.COM Privacy Policy](#)

Exhibit C.3

Complaint Exhibits

BUYCOMP.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq-400_rebate_form.asp

\$400 Rebate (Mail-in Rebate) on the purchase of any Compaq Presario desktop PC and Compaq Monitor or Compaq Presario notebook PC, 7/25 - 10/9/99. Sign up for 3 years of CompuServe 2000 Premier Internet service for \$21.95 a month. Mail-in rebate must be postmarked by 11/30/99.

To redeem this rebate offer, simply:

1. Purchase an eligible Compaq product
2. Sign up for CompuServe 2000 service using your Compaq/CompuServe CD rebate kit
(CD kits are available from your local authorized reseller)
3. Fill in the form, then print it out; or print out the blank form, and fill it in by hand
4. Mail it to the address below with proof of purchase

Compaq / CompuServe "ISAVE" Rebate Offer
PO Box 430800
El Paso, TX 88543-0800

\$400 Mail-in Rebate Form	
1. Credit Information:	
Credit Card #	
Expiration Date:	/ /
(Check One)	
☐ MasterCard ☐ American Express ☐ Visa ☐ Discover	
Bank name (MasterCard/Visa only):	
2. Compaq Presario PC Information:	
Retailer where you purchased your computer:	
PC Serial Number:	
PC Model #	
Monitor Serial Number (if applicable):	
Monitor Model #	
3. UPC Barcode Information:	
Provide the UPC barcode number from the outside of your computer:	
4. CompuServe 2000 Enrollment:	
Subscription program you wish to commit to (please check one) :	
☐ \$400.00 mail-in- rebate. 3-year Commitment to CS2000 at \$21.95 per month.	
OR	
☐ \$400.00 Mail-In-Rebate. Prepayment of \$790.20 for 3 Year Membership of CompuServe 2000 (36 months @ \$21.95 per month)	

Exhibit C.4

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 130

Complaint Exhibits

BUY.COM - The Internet Computer Superstore

http://www.buy.com/comp/stores/compaq_400_rebate_form.asp**5. CompuServe 2000 Screen Name:**

Please complete the following section AFTER setting up your new Compaq Presario computer and establishing your CompuServe 2000 account:

CompuServe 2000 Screen Name:

(your Screen Name will also be your e-mail address, for example: if your screen name is "bjones", then your e-mail address is "bjones@cs.com".)

6. Other:

(optional) Do you plan to cancel your existing Internet service to replace with CompuServe?

☐ Yes ☐ No

If yes to above, which Internet service will you replace?

☐ I don't have an existing Internet service subscription.

I agree to allow CompuServe to charge my credit card based on the rebate plan chosen above. I also agree to abide by the terms and conditions of the CompuServe subscription agreement.

PC and monitor do not have to be purchased at the same time. The rebate must be postmarked by 11/30/99 and received by 12/8/99.

Name
Address
City ST (US ONLY)
ZIP
Phone
E-mail Address

Terms and Conditions

\$400 Mail-In Rebate requires (1) purchase of any eligible Compaq Presario desktop & monitor or notebook computer (2) contract commitment to a 3 year (36 months) subscription for CompuServe 2000 Internet Service at the monthly rate of \$21.95 or full prepayment of \$790.20 at the time of registration, (3) a completed mail-in rebate form, and (4) a dated purchase receipt with a copy of your receipt and UPC code. All of the above must be completed and received by CompuServe within 30 days of purchase. Offer subject to your acceptance of CompuServe Terms of Service. If prepayment is not chosen, membership termination prior to 36 months requires pro-rated repayment of the rebate plus a \$50 cancellation fee, based on the following repayment schedule: Months 1-12/\$400, Months 13-24/\$300.00, and Months 25-36/\$200.00. Within 60 days of rebate approval, the rebate will be credited to your designated credit card or fulfilled by check sent to the name and address provided on the mail-in rebate form. Offer valid in the U.S. only for purchases through 10/9/99. You must be 18 years or older. Limit one per household. A major credit card is required. Premium CompuServe services carry surcharges, and communications surcharges may apply to AK and outside of the U.S. You may incur telephone charges, depending on your calling plan and location. Availability Access to CompuServe may be limited, especially during peak times.

Exhibit C.4

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 the 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, and having duly considered the comments received, 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 BUY.COM Inc. is a Delaware corporation with its principal office or place of business at 85 Enterprise, Aliso Viejo, California 92656.

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. AREbate@ shall mean cash, instant savings, instant credit, credit towards future purchases, merchandise, services, or any other consideration offered to consumers who purchase products or services from respondent, which is provided at the time of purchase, or subsequent to the purchase.
2. Unless otherwise specified, Arespondent@ shall mean BUY.COM Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. AClearly and conspicuously@ shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. *Provided, however,* that in any advertisement presented solely through visual 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 visual 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.

Decision and Order

- B. In a print advertisement, promotional material, or instructional 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.
- 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.

4. In the case of advertisements disseminated by means of an interactive electronic medium such as software, the Internet or online services:

(i) A in close proximity@ shall mean on the same Web page, online service page, or other electronic page, and proximate to the triggering representation, and shall not include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials or other means;

(ii) a disclosure made A through the use of a hyperlink@ shall mean a hyperlink that is itself clear and conspicuous, is clearly identified as a hyperlink, is labeled to convey the nature and relevance of the information it leads to, is on the same Web page, online service page, or other electronic page and proximate to the triggering representation, and takes the consumer directly to the disclosure on the click-through electronic page or other display window or panel.

Decision and Order

5. ACommerce@ 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 labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the price or cost to consumers of such product or service.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of any such computer, computer-related product or Internet access service when that price, cost, or any rebate is conditioned upon the purchase of any other product or service, unless it discloses clearly and conspicuously, and in close proximity to the representation that consumers must purchase the other product or service in order to obtain the represented price or rebate and the cost of the other product or service, including if a service, the length of time that consumers are required to purchase the service.

Provided, that for purposes of this Part, use of the term Arebate@ or Adiscount,@ without any description or characterization of either term shall not, in and of itself, be deemed a representation about the price or cost to consumers of a product or service.

Decision and Order

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the after-rebate cost of such product or service, unless it discloses, clearly and conspicuously, and in close proximity to the representation, the amounts of any and all rebates offered and the total price or cost to consumers of the product or service, excluding any and all rebate amounts (i.e., the before-rebate price).

Provided, however, if (1) the offer involves only one rebate and no other reductions in the total price of such product or service, and (2) respondent discloses the amount of that rebate as prescribed above, then respondent need not disclose the before-rebate price or cost of such product or service.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any Internet access service; or any computer or computer-related product for which the price, cost or any rebate is conditioned upon the purchase of Internet access service; in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of such Internet access service, unless it discloses, clearly and conspicuously:

- A. the dollar amounts of any and all fees, charges, rebate repayments, and other costs consumers are required to pay to cancel the Internet access service; and

Decision and Order

- B. (1) that consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone service charges to access the Internet service, if that is the case; and (2) a means for each consumer to ascertain whether he or she would incur such costs or charges to access the Internet service and the amount of any such costs or charges. Provided that respondent may comply with Part IV.B.(2), above, by disclosing a means by which consumers may obtain information from the Internet service provider about available access phone numbers and the amount of any hourly surcharges or other costs to access the Internet service; and by advising consumers to contact their local telephone company to determine whether using the access telephone number closest to them will incur charges in excess of local service charges.

Provided that in the case of advertisements disseminated through an interactive electronic medium, such as software, the Internet or other online services, respondent may make the disclosures required by this Part through the use of a hyperlink. In addition,

1. for Part IV.A, above, any such hyperlink must be labeled:
AEarly Cancellation of the Internet Service Will Result in Substantial Penalties. Click Here.@;
2. for Part IV.B, above, any such hyperlink must be labeled:
AYou May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here.@

V.

IT IS FURTHER ORDERED that respondent BUY.COM 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:

Decision and Order

- A. All advertisements and promotional materials containing the representation;

Provided however, that in the case of advertisements and promotional materials disseminated by means of an interactive electronic medium, respondent and its successors and assigns may comply with this provision by maintaining and making available all advertisements and promotional materials for computer or computer-related products or services for which the price, cost or any rebate is conditioned upon the purchase of Internet access service; but, multiple versions of advertisements and promotional materials need not be maintained or submitted, if they differ only in terms of the prices of the products or services being offered;

- B. All materials that were relied upon in complying with this Order; 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.

VI.

IT IS FURTHER ORDERED that respondent BUY.COM 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

VII.

IT IS FURTHER ORDERED that respondent BUY.COM 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.

VIII.

IT IS FURTHER ORDERED that respondent BUY.COM 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.

IX.

This order will terminate on September 5, 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 violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

Analysis to Aid Public Comment

- 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 BUY.COM Inc. (Arespondent@).

The proposed consent order has been placed on the public record for thirty (30) days for receipt 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 decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Analysis to Aid Public Comment

Respondent advertises, sells, and distributes books, music and video recordings, personal electronic devices, computer software, personal computers and other products through its Internet Website, www.buy.com. This matter concerns allegedly false and deceptive advertising claims regarding the sale of a \$269 Compaq Presario 5304 computer system based upon a \$400 rebate that required consumers to enter into a three year contract for Internet service.

The Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Compaq Presario 5304 computer system was \$269. In fact, in order to obtain the computer system for \$269, consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of \$21.95 per month or a full payment of \$790.20. The complaint also alleges that in representing that the total cost of the computer system was \$269, respondent failed to disclose or failed to disclose adequately: (a) that consumers were required to subscribe to CompuServe 2000 Internet service for three years at an additional cost of \$21.95 per month or a total cost of \$790.20; (b) the amounts of the rebates, \$200 and \$400, and the total price of the computer system before rebates, \$869; (c) that consumers who cancel the Internet service within three years must repay all or a portion of the \$400 rebate and pay a \$50 cancellation fee; and (d) that CompuServe does not provide local access telephone numbers for its Internet service in all areas, and therefore, that many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

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 making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service.

Analysis to Aid Public Comment

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased. Furthermore, if the advertised product or service is sold together with a service, respondent is also required to disclose the length of time that consumers are required to purchase that service. Part II also contains a proviso that permits respondent to use the terms Arebate@ or Adiscount@ without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (i.e., the before-rebate price). Part III also contains a proviso that states that if there is only one rebate involved in the offer, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

Part IV of the proposed order prohibits the respondent from making any representation about the price or cost of any Internet access service it offers for sale, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may

Analysis to Aid Public Comment

have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of *A*through the use of a hyperlink, provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is, itself, clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclose information about Internet cancellation terms, it must be labeled as follows: *A*Early Cancellation of the Internet Service Will Result in Substantial Penalties. Click Here. Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: *A*You May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here.

Part V of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

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

Analysis to Aid Public Comment

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

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

Part IX of the proposed order is a *Asunset@* 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.

Complaint

IN THE MATTER OF
OFFICE DEPOT, INC.

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

Docket C-3977; File No. 9923313

Complaint, September 5, 2000--Decision, September 5, 2000

This consent order addresses Office Depot's claims regarding the sale of a \$1,049.97 Compaq Presario 5716 computer system based upon a \$400 rebate that required consumers to enter into a three-year contract for Internet service and the sale of a Afree@ emachines computer based upon a similar \$400 rebate. The complaint alleges that Office Depot represented that the total cost of the computer system was \$1,049.97 and that consumers could obtain the Afree@ emachines computer at no cost after rebates. However, Respondent failed to disclose or failed to disclose adequately that: (a) consumers were required to subscribe to CompuServe Internet service for three years at an additional cost; (b) consumers who cancel the Internet service within three years must repay the entire \$400 rebate and pay a \$50 cancellation fee; and (c) CompuServe does not provide local access telephone numbers for its Internet service in all areas, so many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service. The consent order prohibits Office Depot from misrepresenting the price or cost to consumers of computer or computer related equipment, or from representing the cost of any of these products if that price is conditioned on the purchase of another product without disclosing the condition clearly and conspicuously along with the price of the additional product or service that must be purchased. Additionally, the Respondent is required to disclose, if consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service; or, if consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet.

Participants

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

For the Respondents: *James H. Sneed and Joselle M. Allbracht, McDermott, Will & Emery.*