

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.*

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COMPLAINT

The Federal Trade Commission, having reason to believe that Office Depot, 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 Office Depot, Inc. is a Delaware corporation with its principal office or place of business at 2200 Old Germantown Road, Delray Beach, Florida 33445.
2. Respondent has advertised, offered for sale, sold, and distributed office products to the public, including personal computers.
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 5716 computer system, including a computer, a keyboard, a mouse, a 15" monitor, speakers and a color inkjet printer. The advertisements include but are not necessarily limited to the attached Exhibit A. The advertisement contains the following statements:

A.

Office Depot⁷
Low Prices every day.

Save \$750

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1799⁹⁷ Computer, Monitor & Printer
- 400⁰⁰ Internet Mail-In Rebate^{HH}
- 200⁰⁰ Price Reduction
- 150⁰⁰ Package Mail-in Rebates*
1049⁹⁷ After Rebates & \$200 Price Reduction

COMPAQ
5716 COMPUTER WITH INTEL
PENTIUM III PROCESSOR 450 MHz

[A fine print disclosure at the bottom of this newspaper ad states:]

ASave \$400 On Any Computer! (When You Sign Up For An Internet Usage Subscription^{HH})

^{HH} CompuServe \$400 Internet Mail-In Rebate offer is subject to credit approval and your acceptance of CompuServe Terms of Service. Access to CompuServe may be limited especially during peak times. Premium services carry surcharges, and communication surcharges may apply to Arkansas and outside the U.S. You may incur telephone charges depending on your calling plan and location. Offer also requires (1) the purchase of a qualifying eMachine PC, any qualifying HP Pavilion 4500 or 8500 series PC (excluding Model 4530), any qualifying Compaq PC AND Compaq monitor, any qualifying Compaq notebook computer or any IBM Thinkpad, (2) a contract commitment to a 3-year/36-month subscription for CompuServe 2000 Internet Service at a monthly rate of \$21.95, (3) a completed mail-in rebate form, (4) a purchase receipt, and (5) a major credit card. All of the above must be completed and received by CompuServe within 30 days of purchase. Consumers without a valid credit card may pre-pay for 36 months at \$21.95 per month. Within 45 days of credit approval, the \$400 CompuServe Internet Service rebate will be credited to your designated credit card or fulfilled by check sent to the name and address provided on the credit application. Early termination of the 3-year CompuServe 2000 Internet Service requires repayment of the \$400 rebate plus a \$50 cancellation fee. IBM Thinkpad/ CompuServe \$400 Internet Rebate offer expires 9/30/99. HP/CompuServe \$400 Internet Rebate offer expires

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9/30/99. Compaq/ CompuServe \$400 Internet Rebate offer expires 9/30/99. eMachine CompuServe \$400 Internet Rebate offer expires 10/31/99. Age 18 or older. Limit one per household or business. See store for details. CompuServe provides various pricing plans, some of which may be lower than the \$21.95 monthly rate required for this promotion. CompuServe is a trademark of CompuServe Interactive Services Inc.®

5. Through the means described in Paragraph 4, including but not necessarily limited to Exhibit A, respondent has represented, expressly or by implication, that the total cost of a Compaq Presario 5716 computer system is \$1,049.97.

6. In truth and in fact, the total cost of a Compaq Presario 5716 computer system is not \$1,049.97. In order to obtain the Compaq Presario 5716 computer system for \$1,049.97, consumers are required to subscribe to CompuServe Internet Service for 36 months at an additional cost of \$21.95 per month or a full prepayment of \$790.20. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. In its advertisements, including but not necessarily limited to Exhibit A, respondent has represented that the total cost of a Compaq Presario 5716 computer system is \$1,049.97. In these advertisements, respondent has failed to disclose or failed to disclose adequately that (a) in order to obtain the Compaq Presario 5716 computer system for \$1,049.97, consumers are required to subscribe to CompuServe Internet Service for 36 months at an additional cost of \$21.95 per month or a full prepayment of \$790.20; (b) consumers who cancel the Internet service within 3 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, and therefore many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service. These facts would be material to consumers in their purchase or use of the product. The failure to disclose these

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facts, in light of the representation made, was, and is, a deceptive practice.

8. Respondent has disseminated or has caused to be disseminated advertisements for a Afree@ emachines computer. The advertisements include but are not necessarily limited to the attached Exhibit B. The advertisement contains the following statements:

B.

Office Depot⁷

Low Prices every day.

Free emachines Computer After Rebates

When You Sign Up For 3 Years of Prodigy Internet Service*

emachines Save \$450⁰⁰ 17" Monitor
\$449⁹⁹ Computer Only Upgrade for
eTOWER 366i2 WITH INTEL7 -\$400⁰⁰ Prodigy Internet
Rebate* Only \$60 More
CELERONJ PROCESSOR 366MHz- \$50⁰⁰ eTower Mail-in
Rebate

FREE Your Final Price

After Rebates

eView 15" Monitor 812-866.....139.99

[Depiction: An emachines computer tower,

\$ 13.8" Viewable Image Area keyboard,

speaker, and monitor. The words

AFREE Computer After Rebates@ are super-

eView 17" Monitor 953-605.....199.99 imposed

over the picture of the monitor.]

\$ 15.8" Viewable Image Area

[A fine print disclosure in the corner of this ad states:

ASubject to credit approval and 1-, 2-, 3-year membership with Prodigy Internet Service. See store for details. To receive instant savings at check out, customer must make any single or

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multi-product purchase in our store in an amount equal to or exceeding the amount of instant savings between 10/3/99 and 12/31/99, enroll in store in a 1-year, 2-year, or 3-year fixed-term AProdigy Internet/Office Depot Membership@ between 10/3/99 and 12/31/99 with a valid, major credit card, accept terms of Prodigy Internet membership, and comply with terms on Prodigy Internet/Office Depot Membership Program. Terms & Conditions available at store. Instant savings of \$400 for a 3-year contract, \$250 for a 2-year contract and \$100 for a 1-year contract. Available only as a credit against purchases on the visit at which membership is approved. No cash payments will be made to customer. Debit cards and Office Depot charge cards not accepted for membership but may be used for purchases of Office Depot merchandise. Payment of \$19.95 per month is required for the length of your commitment. New Prodigy Internet customers only. 18 years of age and older. Phone charges and premium feature fees not included with Internet service. Cancellation fee equal to instant savings amount plus a penalty fee of \$50 if canceled prior to the end of the contract. See Terms & Conditions in store for additional conditions and restrictions. Your creditworthiness will be established for eligibility. Available in store only. No phone, Internet or special orders. Limit one per household.@]

9. Through the means described in Paragraph 8, including but not necessarily limited to Exhibit B, respondent has represented, expressly or by implication, that the Afree@ emachines computer includes a monitor at no additional cost.

10. In truth and in fact, the Afree@ emachines computer does not include a monitor at no additional cost. Consumers must pay \$139.99 for a 15" monitor or \$199.99 for a 17" monitor. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

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11. Through the means described in Paragraph 8, including but not necessarily limited to Exhibit B, respondent has represented, expressly or by implication, that consumers can obtain the Afree@ emachines computer at no cost, after rebates.

12. In truth and in fact, consumers cannot obtain the Afree@ emachines computer at no cost, after rebates. In order to obtain the Afree@ emachines computer, consumers are required to subscribe to Prodigy Internet Service for 36 months at a cost of \$19.95 per month or a full pre-payment of \$718.20. Therefore, the representation set forth in Paragraph 11 was, and is, false or misleading.

13. In its advertisements, including but not necessarily limited to Exhibit B, respondent has represented that consumers can obtain the Afree@ emachines computer at no cost, after rebates. In these advertisements, respondent has failed to disclose or failed to disclose adequately that (a) in order to obtain the Afree@ emachines computer, consumers are required to subscribe to Prodigy Internet Service for 36 months at a cost of \$19.95 per month or a full pre-payment of \$718.20; (b) consumers who cancel the Internet service within 3 years must repay the entire \$400 rebate and pay a \$50 cancellation fee; and (c) Prodigy does not provide local access telephone numbers for its Internet service in all areas, and therefore many consumers must either pay long distance telephone charges or surcharges of \$6.00 per hour to access its Internet service. 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.

14. 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.

Complaint Exhibits

By the Commission.

Complaint Exhibits

EXHIBIT A

Office DEPOT
Low Prices every day.

Save \$750
1799⁹⁷
- 400⁰⁰
- 200⁰⁰
- 150⁰⁰
1049⁹⁷
Business Lease for
57⁹⁹ PER MONTH*

Upgrade to
17" Monitor for
100 More

Computer Only \$1199⁹⁹

COMPACT
5716 COMPUTER WITH INTEL PENTIUM III PROCESSOR 450MHz
• 96MB 1600MHz Synchronous
• 15 GB UltraDMA Hard Drive
• 6x DVD-ROM Drive
• Home Phoneline Networking 10 Mbps Ethernet Port
• 100MB Jazette ZIP BUILT-IN Drive
• 1.5MB Max Digital DSL 56K Modem
(Actual download speeds may vary)
980 853

MV520 15" COLOR MONITOR
• 13.8" Viewable Image Area
• 0.28 mm Dot Pitch
• 1024 x 768 - 60MHz (max resolution)
984 760

IJ300 COLOR INKJET PRINTER
• Prints 4 ppm Black 2.5 ppm Color
989 266

intel inside
pentium® III

BUSINESS LEASE 12-60 MONTHS
On combined lease of Computers, Business Machines, and Furniture costing \$900 or more.

Save \$400
799⁹⁹
After Internet Rebate

COMPACT PRESARIO 1245
333MHz AMD-K6-2 WITH 3DNOW! TECHNOLOGY
• 32MB Synchronous, Upgradeable to 160MB
• 3.2GB Hard Drive
• 24x (max speed) CD-ROM
• 56K ITU V.90 Modem
(Actual download speeds may vary)
• 512KB L2 Pipeline Burst Cache
• 12.1" HPA Display
• High-Capacity NiMH Battery
992 877

333 MHz
AMD and AMD-K6 are trademarks of Advanced Micro Devices Inc.

Clearance
DESKJET 720C COLOR INKJET PRINTER
• Prints 5 ppm Black/4 ppm Color
• 1-Year Express Exchange Warranty
• HP PhotoREt II Color Layering Technology
233-313

brother MFC-1970 ALL-IN-ONE
• Plain paper fax — 14.4 bps
• 1MB memory stores up to 50 pages
• Speaker phone
• Printer — 200 x 400 dpi
• Scanner — 400 dpi
• Copier — Multi-copying up to 99 copies
357-974

Save \$400 On Any Computer! (When You Sign Up For An Internet Usage Subscription!)
*Compuserve \$400 Internet Rebate offer is subject to credit approval and your acceptance of Compuserve Terms of Service. Access to Compuserve may be limited especially during peak times. Premium service carry charges, and communication surcharges may apply to Arkansas and outside the U.S. You may incur additional charges depending on your calling plan and location. Offer also requires (1) the purchase of a qualifying interactive PC or any qualifying HP Pavilion 4000 or 5000 series PC (excluding Model K300), any qualifying Compaq PC AND Compaq monitor, any qualifying Compaq notebook computer or any IBM Thinkpad (2) a 3-year/36-month subscription for Compuserve 2000 Internet Service at a monthly rate of \$21.95 (3) a completed mail-in rebate form, (4) a purchase receipt and (5) a major credit card. All of the above must be completed and returned to Compuserve within 90 days of purchase. Consumers without a valid credit card may pre-pay for 36 months at \$21.95 per month. Within 45 days of credit approval, the \$400 Internet Service rebate will be credited to your designated credit card or fulfilled by check sent to the name and address provided on the credit application. Early termination of the 3-year Compuserve 2000 Internet Service requires payment of the \$400 rebate plus a \$20 cancellation fee. IBM Thinkpad/Compaq \$400 Internet Rebate offer expires 9/30/99. HP/Compaq \$400 Internet Rebate offer expires 9/30/99. Compuserve provides various pricing plans, some of which may be lower than the \$21.95 monthly rate required for this promotion. Compuserve is a trademark of Compuserve Interactive Services, Inc.

For FREE Next Business Day Delivery: **

PHONE: 1-888-GO-DEPOT (1-888-463-3768)

FAX: 1-800-685-5010

ONLINE: www.officedepot.com AOL Keyword: Office Depot

Source Code: 99240

For The Office Depot Nearest You, Call 1-888-GO-DEPOT (1-888-463-3768)

LOW PRICE GUARANTEE

It's this simple: If you find the same item advertised locally for less or any other offer product superior — even up to 7 days after you bought it — we'll not only match that price, we'll give you 55% of the difference. Instant! Just give us the details — and we'll make your word for it! (Maximum \$55 credit). We reserve the right to limit quantities. Excludes internet offers, ad errors, rebates, services, floor mats, and installation. Not valid on in-stock items only. We are not responsible for granting or expiring offers. Prices and offers good 9/1/99 through 9/27/99 (unless otherwise noted). Quantities limited. Offers limited to in-stock items only. No cashback or substitutions. Rebate form available in store only. **Available on orders at \$50 or more within our local trading area. Not all items available for next business day delivery.

Office DEPOT

Low Prices every day.

FREE emachines Computer After Rebates

With Prodigy Internet Service

emachines

TOWER 366i2 WITH INTEL CELERON™ PROCESSOR 366MHz

- 17" Monitor
- 4x DVD-ROM drive
- Memory upgrade to 1GB
- Modem
- Mouse
- Keyboard
- Microsoft Office 2000
- Microsoft Windows XP

17" Monitor (Typing rate 1000
Only 168 lbs.)

\$449.99 (Typing rate 1000
Only 168 lbs.)

\$469.99 (Typing rate 1000
Only 168 lbs.)

50% OFF (Typing rate 1000
Only 168 lbs.)

FREE (Typing rate 1000
Only 168 lbs.)

After Rebates

Available in store only.

While Supplies Last.

***INSTANT SAVINGS** on all your purchases!

with Prodigy Internet **\$19.99**

3rd computer \$400.00 (Instant Savings)

2nd computer \$250.00 (Instant Savings)

1st computer \$100.00 (Instant Savings)

brother Fax Machines

New! brother 12ppm Print Speed!

129.99

169.99

229.99

299.99

168 lbs.

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 Office Depot, Inc., is a Delaware corporation with its principal office or place of business at 2200 Old Germantown Road, Delray Beach, Florida 33445.

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, 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, "respondent" shall mean Office Depot, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Clearly 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.

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- 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 the Internet or online services, "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.

5. "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 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, or by depiction, the price or cost to consumers of such product or

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service, or what is included in the price or cost of any 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.

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 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:

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- 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
- 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 III.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.

IV.

IT IS FURTHER ORDERED that respondent Office Depot, 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

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- 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.

V.

IT IS FURTHER ORDERED that respondent Office Depot, 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.

VI.

IT IS FURTHER ORDERED that respondent Office Depot, 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.

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VII.

IT IS FURTHER ORDERED that respondent Office Depot, 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.

VIII.

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:

- 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 to Aid Public Comment

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 Office Depot, 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.

Respondent advertises, sells, and distributes office products, including personal computers. This matter concerns allegedly false and deceptive advertising 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 Commission's proposed complaint alleges that respondent falsely claimed that the total cost of a Compaq Presario 5716 computer system was \$1,049.97. In fact, in order to obtain the system for \$1,049.97, consumers were required to subscribe to CompuServe 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 \$1,049.97, 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 of \$21.95 per month or a full payment of \$790.20; (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, and therefore, that many consumers must either pay long distance

Analysis to Aid Public Comment

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.

In addition, the complaint alleges that respondent falsely claimed that a Afree@ emachines computer included a monitor at no additional cost. In fact, the monitor cost \$139.99 or \$199.99, depending on its size. The complaint also alleges that respondent falsely claimed that consumers could obtain the Afree@ emachines computer at no cost after rebates. In fact, in order to obtain the computer at no cost, consumers were required to subscribe to Prodigy Internet Service for three years at an additional cost of \$19.95 per month or a full payment of \$718.20. The complaint also alleges that in representing that consumers could obtain the Afree@ emachines computer at no cost after rebates respondent failed to disclose or failed to disclose adequately that: (a) consumers were required to subscribe to Prodigy Internet service for three years at an additional cost of \$19.95 per month or a total cost of \$718.20; (b) consumers who cancel the Internet service within three years must repay the entire \$400 rebate and pay a \$50 cancellation fee; and (c) Prodigy 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 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 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 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 disseminating the representations.

Analysis to Aid Public Comment

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

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

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

Part VIII 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

SMARTSCIENCE LABORATORIES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3980; File No. 9923274

Complaint, November 2, 2000--Decision, November 2, 2000

This consent order addresses SmartScience's representations for JointFlex. The complaint alleges that Respondent advertised that JointFlex eliminated significant pain due to disabling joint conditions, crushed vertebrae, arthritis, herniated disk, and other conditions and that JointFlex provided more pain relief than other over-the-counter pain creams. The complaint also alleges that Respondents ads represented that the glucosamine sulfate and chondroitin sulfate in JointFlex contribute to pain relief when applied topically, but that respondents do not possess competent and reliable evidence that the glucosamine sulfate and chondroitin sulfate in JointFlex, a topically applied cream, penetrates the skin sufficiently to induce a pharmacological effect. The consent order requires SmartScience to have competent and reliable scientific substantiation for any future claims about the comparative efficacy of JointFlex or any other drug or supplement or any ingredient therein for relieving reducing or eliminating pain, or providing health benefits. In addition, the consent order prohibits the respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study and that the experience of any testimonialist or endorser is typical unless this conclusion is supported by competent and reliable scientific evidence. The order provides a safe harbor not prohibiting representations that permitted by a standard promulgated by the Food and Drug Administration for labeling or in a drug approval.

Participants

For the Commission: *Janet M. Evans, C. Lee Peeler, and BE.*

For the Respondents: *Steven Weitzman, SmartScience Laboratories, Inc. and Gilbert Weil, Weil, Guttman & Malkin L.L.P.*