

Complaint

IN THE MATTER OF

HEWLETT-PACKARD COMPANYCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4009; File No. 0023220*
Complaint, May 15, 2001--Decision, May 15, 2001

This consent order addresses representations by Respondent Hewlett-Packard Company about its Pocket PC handheld computer -- a personal digital assistant featuring Microsoft Corp.'s Windows CE operating system -- regarding its ability to access the Internet and email accounts. The order, among other things, prohibits the respondent from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts. The order also prohibits the respondent from making any representation about the ability of any covered device to access the Internet or email accounts without clearly and conspicuously disclosing any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services that consumers must purchase in order to access the Internet or email accounts.

Participants

For the Commission: *Jock Chung, Keith Fentonmiller, Michael Ostheimer, Anne Maher, C. Lee Peeler, and Louis Silversin.*

For the Respondent: *Robert A. Skitol, Drinker, Biddle & Reath LLP.*

COMPLAINT

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

Complaint

1. Respondent Hewlett-Packard Company is a Delaware corporation with its principal office or place of business at 3000 Hanover Street, Palo Alto, California 94304.
2. Respondent has manufactured, advertised, offered for sale, sold, and distributed products to the public, including HP Jornada Pocket PC handheld computers. These devices function as personal digital assistants, featuring Microsoft Corp.'s Windows CE operating system. They provide ready access to addresses, tasks, calendars, and memos and are equipped with software programs, including "Pocket" versions of Word, Excel, Outlook, and Internet Explorer.
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 participated in the dissemination of cooperative advertisements for the HP Jornada Pocket PC, including but not necessarily limited to the attached Exhibits A and B. Respondent has also disseminated or has caused to be disseminated other advertisements and packaging for the HP Jornada Pocket PC, including but not necessarily limited to the attached Exhibits C through H. These advertisements and packaging contain the following statements and depictions:

A. (Exhibit A: newspaper advertisement)

"Can your palm do that?"

[Depiction: A man next to a close-up of an HP Jornada Pocket PC. The screen of the device shows an e-mail that contains a hyperlink to an Internet URL address. Attached to the e-mail are Microsoft Word and Excel documents.]

"It can if it's holding an **HP Jornada Pocket PC**.

Who wants e-mail without attachments? No one! That's why the new Pocket PC lets

Complaint

you open all Microsoft® Word and Excel attachments as well as photos and HTML pages. You can also access your ISP, corporate network, Outlook®, and the most popular Internet e-mail accounts*, anytime."

[An extremely fine print disclosure, in approximately 4 point type, in white print on an orange background, at the very bottom of the ad states:

*"*Pocket PCs support industry-standard POP3 and MAP4 e-mail protocols. Please check with your ISP to verify its support. Modem required. Sold separately."]*

B. (Exhibit B: magazine advertisement)

"Can your palm do that?"

[Depiction: A woman next to a close-up of an HP Jornada Pocket PC. The screen of the device shows the Internet Explorer program running. It displays the <http://mobile.msn.com/pocketpc> Web page which is headlined "msn™ Mobile" and contains hyperlinks to Expedia.com™Travel, [MSNBC News](http://MSNBC.com), and several other services.]

"It can if it's holding an HP Jornada Pocket PC.

Who wants only part of the Web when you can have it all? With the new Pocket PC, you can get online with Microsoft® Pocket Internet Explorer, take advantage of The Everyday Web at msn.com, or access any URL*. Order groceries, make a trade or book your next vacation knowing your transaction is secure. Or simply download your favorite pages and take them with you."

[An extremely fine print disclosure, in approximately 4 point type, in white print on an orange background, at the very bottom of the ad states:

*"*Online use requires modem, sold separately. msn.com is available free of charge on the World Wide Web. Connect time charges may apply."]*

Complaint

C. (Exhibit C: pamphlet)

"Your life. Your style.

Stay on top of your world with the new
HP Jornada 540 Series Color Pocket PC.

It delivers the best of a PC in a slim,
lightweight, and *stylish* package that
fits your life – and your pocket!

Sync, grab, and go [*Depiction: An HP Jornada Pocket PC
being placed inside a sports bag.*]

- Synchronize fast with your desktop PC
- Access contacts, appointments, and e-mail
- View e-mail attachment files

Stay in touch, get online [*Depiction: An HP Jornada*

- Surf the Web from anywhere Pocket PC.]
- Send instant messages to online friends
- Get the latest news, sports scores, and
stock information"

D. (Exhibit D: Web page)

[*Depiction: HP Jornada Pocket PC.*]

As a busy professional, you know every day can be a challenge.
But now there's something that can help you handle it all with
ease: the HP Jornada 540 Series Color Pocket PC. It has
everything you need to effortlessly juggle the details -- and
have fun while you're doing it. All in a slim, lightweight
package that's a perfect fit for your lifestyle.

...

Stay in touch, get online

Check your e-mail and surf the Web. Stay up-to-date with the
latest news, sports scores, and stock information.

...

Complaint

Do it all in style

Designed to fit the way you live, the slim HP Jornada is secure in your hand and small enough to carry anywhere.

E. (Exhibit E: Web page)

"A Hewlett-Packard Company
hpshopping.com United States"

[Depiction: An HP **"HP Jornada 545 Pocket PC**
Jornada Pocket PC.]

Introducing the PC companion that helps you handle it all with ease. The HP Jornada 545 Color Pocket PC powered by Windows contains everything you need to juggle your busy lifestyle-and have fun while you're doing it. Check e-mail, review Word and Excel documents, and surf the Web. . . . Super-slim to fit in your hand, and light enough to carry in your pocket, the HP Jornada 545 is perfect for your busy lifestyle."

"Price \$499.00"

[Hyperlink labeled:
"Add to Basket"]

F. (Exhibit F: product package)

"Handle it all with ease
HP Jornada 545 Color Pocket PC

...

Stay **Review** and act on your e-mail and surf the Web.
Send instant messages to

in touch, online friends and stay up-to-date with the latest
news, sports scores, and

get online stock information. When you're ready to do more,
add a third-party modem card or wireless accessory
using the CompactFlash expansion slot.^{1"}

Complaint

[Depiction: A man holding an HP Jornada Pocket PC. Next to him are a golf ball, putter, and golf tee.]

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that the HP Jornada Pocket PC contains everything that consumers need to access the Internet and their e-mail accounts, at anytime and from anywhere.

6. In truth and in fact, the HP Jornada Pocket PC does not contain everything that consumers need to access the Internet and their e-mail accounts, at anytime and from anywhere. In order to access the Internet and their e-mail accounts using the Jornada Pocket PC, when away from their computers ("remotely"), consumers must purchase and carry a separate modem or similar device that in most cases must be connected to a land telephone line or a mobile telephone. Moreover, many mobile telephones currently in use in the United States are not compatible with the Jornada Pocket PC. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

7. In its advertisements respondent has represented that consumers can use the HP Jornada Pocket PC to access the Internet and their e-mail accounts, at anytime and from anywhere. In these advertisements, respondent has failed to disclose or failed to disclose adequately that in order to access remotely the Internet and their e-mail accounts, consumers must purchase and carry a separate modem or similar device. This fact would be material to consumers in their purchase or use of the product. The failure to disclose this fact, 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 fifteenth day of May, 2001, has issued this complaint against respondent.

Can your palm do that?

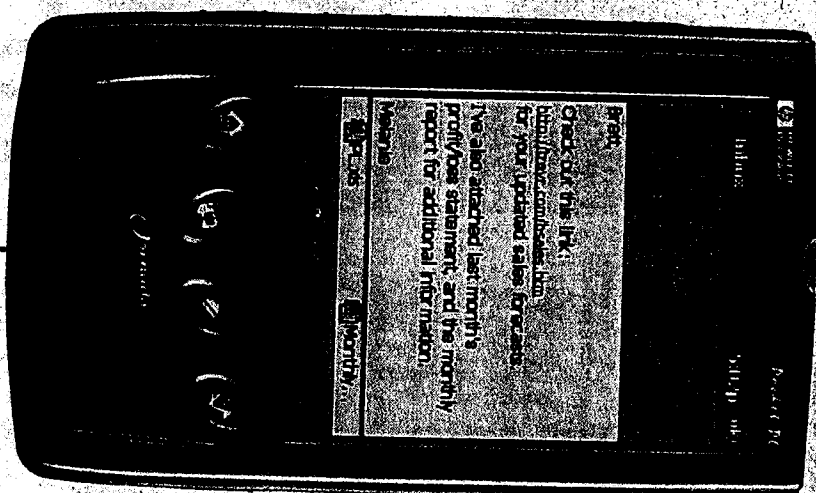
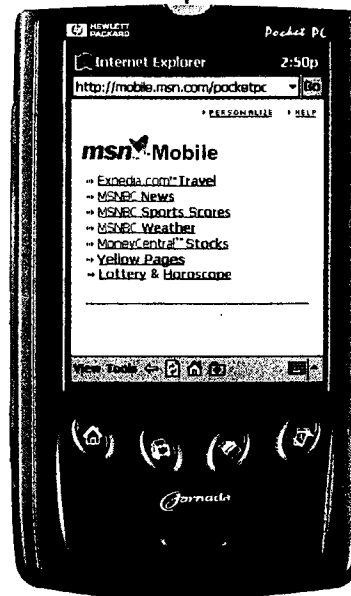


Exhibit A

Can your palm do that?



It can if it's holding an HP Jornada **Pocket PC.**

Who wants only part of the Web when you can have it all? With the new Pocket PC, you can get online with Microsoft® Pocket Internet Explorer, take advantage of The Everyday Web at msn.com, or access any URL*. Order groceries, make a trade or book your next vacation knowing your transaction is secure. Or simply download your favorite pages and take them with you. So, the next time you open your palm...make sure it's holding an HP Jornada Pocket PC.

What else can the Pocket PC do?
Go to hp.com/jornada



Exhibit B



invent

*Online use requires modem, sold separately. msn.com is available free of charge on the World Wide Web. Connect time charges may apply.

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Where do you want to go today?

Microsoft®

Your life. Your style.

Stay on top of your world with the new HP Jornada 540 Series Color PDA. It delivers the power of a PC in a slim, lightweight and tough package that fits your life—and your pocket.

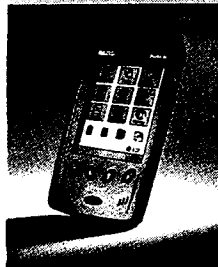
Sync, grab, and go

- Synchronize fast with your desktop PC
- Access contacts, appointments, and e-mail
- View e-mail attachment files



Make free time fun

- Listen to audio books and news
- Hear popular MP3 and WMA music
- Read e-books clearly and comfortably
- Create a digital photo album to share with friends



Do it all in style

- Slim design makes it easy to carry anywhere
- Elegant alloy casing allows you to project professionalism
- Personalize to fit your needs with a variety of accessories

Features and Software

- Fast 32-bit processor
- Rich 65,536-color backlit screen
- CD-quality stereo sound
- Fast synchronization with USB or serial
- CompactFlash Type I expansion slot
- Software: Microsoft Windows for Pocket PC, ActiveSync, and Outlook 2000; Microsoft Pocket PC software including Word, Excel, Outlook, Internet Explorer, including AvantGo.com, Windows Media Player, Address Book, Sheets, Sierra Imaging Image Expert, CE Music, and ZIO Interactive ZIOGolf. And more.
- Accessories: USB cradle and cradle, car trade and car kit, and more.

Exhibit C

HP.com Home	HP Products	HP Services & Support	Buy HP
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HP Jornada 540 Series

SEARCH

ASSISTANCE

Jornada HOME

Product Information

Technical Support

Where to Buy

News Room

Accessories

Software and Hardware Solutions

Document Library

Developer's Corner

How to Choose

Promotions

Register Online



Jornada
Demo

Jornada
Brochures

click to download
YAHOO!
Messenger
for use with the HP Jornada

Jornada 540 Series
Product Specifications

Select a country

United States ☒

[BuyOnline](#)

As a busy professional, you know every day can be a challenge. But now there's something that can help you handle it all with ease: the HP Jornada 540 Series Color Pocket PC. It has everything you need to effortlessly juggle the details – and have fun while you're doing it. All in a slim, lightweight package that's a perfect fit for your lifestyle.

Sync, grab, and go

Synchronize with your desktop PC instantly. Carry your contacts and schedule everywhere with Microsoft® Pocket Outlook.

Stay in touch, get online

Check your e-mail and surf the Web. Stay up-to-date with the latest news, sports scores, and stock information.

Do more in less time

View and edit Word and Excel documents anytime, anywhere. Transfer multimedia files faster via USB.

Make free time fun!

Exhibit D

Read electronic books, view photos, listen to digital music, audiobooks, and news, and play games.

Do it all in style

Designed to fit the way you live, the slim HP Jornada is secure in your hand and small enough to carry anywhere.

[540 SERIES HOME](#) | [540 SERIES TOUR](#) | [PRODUCT FEATURES](#) | [SOFTWARE](#)
[ACCESSORIES](#) | [HP CUSTOMER CARE](#) | [INSIDE THE BOX](#)

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Exhibit D

HP.com Home



A Hewlett-Packard Company
hpshopping.com

Other Countries

United States



Price: \$499.00



2-Day Shipping
 Included with
 Purchase.

HP Jornada 545 Pocket PC

Introducing the PC companion that helps you handle it all with ease. The HP Jornada 545 Color Pocket PC powered by Windows contains everything you need to juggle your busy lifestyle-and have fun while you're doing it. Check e-mail, review Word and Excel documents, and surf the Web. You can even listen to digital music and read electronic books in brilliant color! Super-slim to fit in your hand, and light enough to carry in your pocket, the HP Jornada 545 is perfect for your busy lifestyle.

Special Features

Sync, grab, and go

- Sync with your desktop PC instantly
- Carry your contacts and schedule everywhere with Microsoft Pocket Outlook

Stay in touch, get online

- Check your e-mail and surf the Web
- Stay up-to-date with the latest news, sports scores, and stock information

Do more in less time

- View and edit Word and Excel documents anytime, anywhere
- Transfer multimedia files faster with the USB cradle or serial cable

Make free time fun

- Read electronic books, view photos, listen to digital music, audio books, and news, and play games

Do it all in style

- Designed to fit the way you live, the super-slim HP Jornada is easy to grip and carry anywhere

Included in the box

- HP Jornada 545 Series Color Pocket PC
- AC Adapter
- USB Cradle
- Serial Cable
- Lithium-Ion Rechargeable Battery
- HP Jornada Quick Start Guide

Software & Support

- HP Jornada CD-ROM
- Microsoft® Windows® for Pocket PC CD-ROM
- Microsoft Outlook 2000 CD-ROM

Warranty

- One-year warranty

For complete product specification, click [here](#).

Handheld Devices

Exhibit E

- HP Jornada PC User's Guide
- HP Jornada Accessories Guide

To add an item to your shopping basket, click the *Add* button.

Product #	Description	Price	Payments as low as
F1824A-ABA	HP Jornada 545 Pocket PC	\$499.00	\$14.89/mo. 

[<< Previous Product](#) | [Products](#) | [Next Product >>](#)

Buy Online or Call 1.888.999.4747

* This page has links which will take you outside the Hewlett-Packard Web site.
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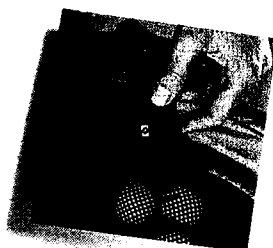
Exhibit E

Handle it all with ease

HP Jornada 545 Color Pocket PC

Sync,
grab,
and go

Synchronize with your desktop PC at the touch of a button. Then carry and access your contacts, tasks, calendars, memos, and e-mail anywhere. Even view e-mail attachment files.



Stay
in touch,
get online

Review and act on your e-mail and surf the Web. Send instant messages to online friends and stay up-to-date with the latest news, sports scores, and stock information. When you're ready to do more, add a third-party modem card or wireless accessory using the CompactFlash expansion slot.¹

in less time

Efficiently review and revise your documents and spreadsheets using familiar pocket versions of Word and Excel. Download digital music, images, and other multimedia files *fast* with the USB cradle.² Instantly find the information you need with quick launch screen icons. And quickly capture your thoughts with the built-in voice recorder.

Make
free time

Listen to your favorite audio books and articles from leading newspapers and magazines. Hear popular MP3 and WMA music and compile your own digital music playlist. Read best-selling e-books. Even create a digital photo album to share with friends. With the stereo-quality audio system and unique, vertically aligned pixel color screen, you can listen, read, and relax in comfort.

Do it all
in style

Designed to fit the way you live, the super-slim HP Jornada features a rubber protection strip to make it easy to grip and carry anywhere. Its elegant alloy casing allows you to project style and professionalism in any environment, while its sleek metal cover provides durability and protects the screen from scratches. You can also personalize it to fit your needs with a variety of accessories.

For more information on the
HP Jornada 545 Color Pocket PC,
please visit our Web site at:
www.hp.com/jornada

 HEWLETT
PACKARD

¹ CompactFlash Type I expansion slot. Modem card and wireless accessories must be purchased separately.
² USB cradle works with Windows 98 and Windows 2000 only. For Windows 95 and NT users, a serial connection is required.

Jornada 545

Standard Features

- Fast 32-bit processor
- 16MB RAM; 16MB ROM
- Rich 65,536-color backlit screen
- CD-quality stereo sound

Convenient, Built-In Software

- Microsoft® Windows® for Pocket PC
- Microsoft Pocket PC software: Word, Excel, Outlook, ActiveSync®, Internet Explorer (including AvantGo.com™), Windows Media Player, Reader, Money, Streets
- LandWare OmniSolve™ 1.01
- Conduits Technologies, Inc. PeaceMaker 1.0
- Exclusive HP applications: settings, backup, home, task switcher, game buttons, security.
- Socket Communications™ Ethernet drivers

Accessories

Customize the HP Jornada to meet your needs! HP offers a comprehensive line of accessories to express your unique style. Please see the accessories guide in this box for details.

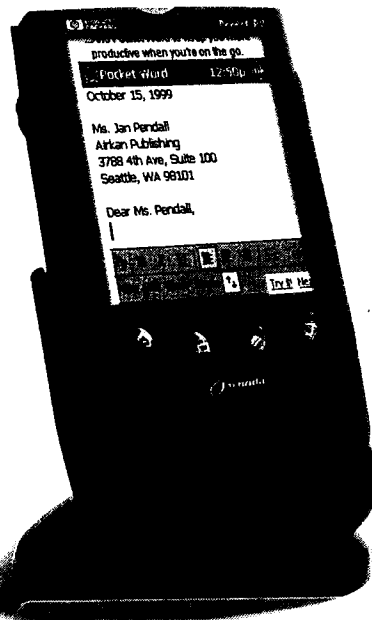


Exhibit F

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 attorneys, 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 Hewlett-Packard Company is a Delaware corporation with its principal office or place of business at 3000 Hanover Street, Palo Alto, California 94304.

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. Unless otherwise specified, "respondent" shall mean Hewlett-Packard Company, a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. "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.
 - 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 same display panel as the triggering

Decision and Order

representation 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.

3. In the case of advertisements disseminated by means of an interactive electronic medium such as software, the Internet, or online services, a disclosure made through the use of a hyperlink shall not be deemed "clear and conspicuous" unless the hyperlink itself is 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 webpage, 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.

4. "Remotely access the Internet or email accounts" shall mean accessing the Internet or email messages when away from any computer.

5. "General-purpose ISP service" shall mean the category of services which allow consumers to access the Internet from personal computers. It shall not include a specific Internet access service, if respondent's product requires use of that specific service to access the Internet.

6. "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 personal digital assistant or

Decision and Order

handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to remotely access the Internet or email accounts, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the ability of such product to access the Internet or email accounts, or any performance characteristic of such product affecting access to the Internet or email accounts.

II.

IT IS FURTHER 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 personal digital assistant or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to remotely access the Internet or email accounts, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the ability of any such product to access the Internet or email accounts unless respondent discloses, clearly and conspicuously, any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services, other than general-purpose ISP service, that consumers must purchase in order to access the Internet or email accounts using such product.

III.

IT IS FURTHER ORDERED that respondent Hewlett-Packard Company 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;

Decision and Order

- 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.

IV.

IT IS FURTHER ORDERED that respondent Hewlett-Packard Company 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 managerial or supervisory employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Hewlett-Packard Company 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

Decision and Order

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.

VI.

IT IS FURTHER ORDERED that respondent Hewlett-Packard Company 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.

VII.

This order will terminate on May 15, 2021, or (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

Decision and Order

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

Analysis of Proposed Consent Order to Aid Public Comment

Issued when the Commission tentatively approved a proposed consent order on February 13, 2001

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Hewlett-Packard Company ("HP").

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.

This matter involves alleged misleading representations for respondent's HP Jornada Pocket PC handheld computer ("Jornada") -- a personal digital assistant ("PDA"), featuring Microsoft Corp.'s Windows CE operating system. This matter concerns allegedly false and deceptive advertising claims made in cooperative advertisements, other advertisements, and product packaging regarding the ability of the Jornada to access the Internet and email accounts.

According to the FTC complaint, HP falsely claimed that the Jornada contains everything that consumers need to access the Internet and their email accounts, at anytime and from anywhere. In fact, in order to access the Internet and their email accounts using the Jornada, when away from their computers ("remotely"), consumers must purchase and carry a separate modem or similar device that in most cases must be connected to a land telephone line or a mobile telephone; and moreover, many mobile telephones currently in use in the United States are not compatible with the Jornada Pocket PC. The complaint also alleges that in representing that consumers can use the Jornada to access the Internet and their email accounts, at anytime and from anywhere, respondent failed to disclose or failed to disclose adequately that in order to access remotely the Internet and their email accounts, consumers must purchase and carry a separate modem or similar

Analysis

device. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

The proposed consent order contains provisions designed to prevent HP from engaging in similar acts and practices in the future. Specifically, Parts I and II address representations regarding any PDA or handheld Internet or email access device that requires the use of an additional device or connection to a telephone land line in order to access the Internet or email accounts remotely ("covered devices").

Part I of the proposed order prohibits respondent from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts.

Part II of the proposed order prohibits respondent from making any representation about the ability of any covered device to access the Internet or email accounts unless respondent discloses, clearly and conspicuously, any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services (other than general-purpose ISP service, as defined in the order) that consumers must purchase in order to access the Internet or email accounts.

Parts III through VI of the order require HP to keep copies of relevant advertisements and materials substantiating claims made in the advertisements, to provide copies of the order to certain of its personnel, to notify the Commission of changes in corporate structure, and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official

Analysis

interpretation of the agreement and proposed order or to modify in any way their terms.

Statement

Concurring Statement of Commissioner Orson Swindle

I voted to issue both of these consent orders, because they are adequate relief for the violations alleged in the complaints. Nonetheless, I have strong reservations about the use of unenforceable “voluntary” consumer education. In each of these cases, staff negotiated with the proposed respondent to achieve a consumer education campaign that is being undertaken wholly outside the confines of the order. Consumer education remedies sometimes pose difficult issues, and Commissioners may disagree as to whether a particular consumer education remedy is appropriate and reasonably related to the complaint allegations. Yet the solution for such disagreements is not simply to excise such remedies from the legally enforceable obligations that respondents are undertaking in settlement. If consumer education is important enough to include in negotiations, there likely is some impact on what is achieved in negotiating the terms of the consent order itself. Moreover, to the extent that the FTC promotes such “voluntary” consumer education initiatives in our efforts to publicize the consent agreements, we may see many more deep-pocketed respondents seeking to add a bit of “voluntary” and unenforceable consumer education to a broader promotional campaign in exchange for a weaker order than might otherwise be negotiated.

Complaint

IN THE MATTER OF

MICROSOFT CORPORATION

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

*Docket C-4010; File No. 0023331
Complaint, May 15, 2001--Decision, May 15, 2001*

This consent order addresses representations by Respondent Microsoft Corporation about Pocket PC handheld computers -- personal digital assistants that feature Microsoft's Windows CE operating system -- regarding their ability to access the Internet and email accounts. The order, among other things, prohibits the respondent from making any misrepresentations about the ability of any covered device to access the Internet or email accounts, or about any performance characteristic of any covered device affecting access to the Internet or email accounts. The order also prohibits the respondent from making any representation about the ability of any covered device to access the Internet or email accounts without clearly and conspicuously disclosing any other products (such as a modem, mobile telephone, or adapter) or Internet or email access services that consumers must purchase in order to access the Internet or email accounts.

Participants

For the Commission: *Jock Chung, Keith Fentonmiller, Michael Ostheimer, Anne Maher, C. Lee Peeler, and Louis Silversin.*

For the Respondent: *Charles Buffon, Covington & Burling.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Microsoft Corporation, 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 Microsoft Corporation is a Washington corporation with its principal office or place of business at One Microsoft Way, Redmond, Washington 98052.