

Complaint

IN THE MATTER OF

PALM, INC.

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

Docket C-4041; File No. 0023332
Complaint, April 17, 2002--Decision, April 17, 2002

This consent order addresses representations that Respondent Palm, Inc. made in advertisements regarding the ability of Palm handheld computers and personal digital assistants ("PDAs") to wirelessly access the Internet and email accounts and to perform other functions. The order, among other things, prohibits the respondent from misrepresenting that any PDA or handheld Internet or email access device can perform any common business function that it cannot perform without additional products or services that consumers must purchase. The order also prohibits the respondent from misrepresenting that wireless Internet or email service coverage for such products is available everywhere or almost everywhere in the United States. In addition, the order prohibits the respondent from misrepresenting performance characteristics relating to Internet or email account access of any non-wireless PDA or handheld Internet or email access device. The order also requires the respondent – whenever it makes any claims about the ability of any PDA or handheld Internet or email access device to perform any function that requires the purchase of additional products or services – to clearly and conspicuously disclose the contours of that requirement.

Participants

For the Commission: *Jock Chung, Keith Fentonmiller, Michael Ostheimer, Mary K. Engle, and Louis Silversin.*

For the Respondent: *Kevin J. Arquit, Craig A. Waldman, and Jeffrey H. Drichta, Clifford Chance Rogers & Wells.*

COMPLAINT

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

Complaint

1. Respondent Palm, Inc. is a Delaware corporation with its principal office or place of business at 5470 Great America Parkway, Santa Clara, California 95054.
2. Respondent has manufactured, advertised, offered for sale, sold, and distributed products to the public, including Palm handheld computers. These Palm devices, including the Palm m100, Palm III, Palm V, and Palm VII model lines, function as personal digital assistants ("PDAs"). They provide ready access to addresses, tasks, calendars, and memos. With Palm.Net wireless service, the Palm VII model line can, as sold, wirelessly access portions of the Internet and some email accounts from a number of metropolitan areas.
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 and packaging for the Palm PDAs, including but not necessarily limited to the attached Exhibits A through E. These advertisements and packaging contain the following statements and depictions:

A. (Exhibit A: magazine advertisement)

**"PERFECT FOR READING E-MAIL WHEN
YOU'RE
"OUT SICK" AT THE BALL GAME.**

Every now and then the chains come off and you find yourself away from your desk. (Reluctantly, of course.) No problem. The Palm™ platform lets you bring the office with you. Read e-mail. Draft memos. And check appointments. It's also perfect for reading news, entertainment and travel information. Wherever you want. Without blowing your cover. Efficiently. Elegantly. Simply."

Complaint

Database Manager
Intranet Access
Custom Form Creation
Expense Reports
Maps
Send & Receive Faxes
Digital Camera
Sales Force Automation
Infrared Beaming
View Word & Excel
Internet Access
E-Mail
Flight Schedules
Shareware
Inventory Management
Stock Quotes & Trading
Customer Relationship Mgt.
Link to Outlook
Paging
Syncing with a PC
Business Card Scanner

Simply Palm™

www.palm.com

[Depiction of a Palm V PDA. The screen of the Palm displays an email message.]

[An extremely fine print disclosure, in approximately 4-point type at the bottom of the ad states in part:

"Application software and hardware add-ons may be optional and sold separately. Applications may not be available on all Palm handhelds."/]

Complaint

B. (Exhibit B: magazine advertisement)

""THE MARKET'S DOWN BUY!""

Online trading has revolutionized personal investing. Now the Palm™ handheld takes that revolution wireless. With access to the internet, the Palm platform lets you check market news and make trades along with its scores of other business and personal applications. It's all about going where life takes you - and bringing your portfolio along. Efficiently. Elegantly. Simply."

Database Manager
Intranet Access
Custom Form Creation
Expense Reports
GPS
Send & Receive Faxes
Digital Camera
Sales Force
Automation
Infrared Beaming
View Word & Excel
Wireless Access
Flight Schedules
Shareware
Inventory Management
Stock Quotes &
Trading
Customer Relationship
Mgt.
Link to Outlook
Paging
Syncing with a PC
Business Card Scanner

Simply Palm™
www.palm.com

[Depiction of a Palm VII PDA. The screen of the Palm displays a form for trading stocks.]

[An extremely fine print disclosure, in approximately 4-point type at the bottom of the ad states in part:

Complaint

"Application software and hardware add-ons may be optional and sold separately."/]

C. (Exhibit C: newspaper advertisement)

[Depiction of two golfers on a golf green]

"Palm Powered handhelds give you real-time access to information where it really matters -- in the field. View and edit applications like MS Excel and Outlook. Check inventory, send an email, place an order, and close the deal. Update account information and send it back to the office, along with your new updated handicap. Simply amazing.

Simply Palm™"

[An extremely fine print disclosure, in approximately 4-point type, running along the side of the ad in poorly-contrasting, black text against a very dark background, states in part:

"Application software and hardware add-ons may be optional and sold separately. Applications may not be available on all Palm handhelds."/]

D. (Exhibit D: magazine advertisement)

[Depiction of mountains with a person in the distance hanging upside down from a fully-extended bungee cord. A screen-shot of a Palm device, oriented upside down like the hanging person, is superimposed on the horizon. The words "eMail" and "Sent" appear at the top of the Palm screen. Below these words a message reads "Scott, Remember that bet we made when we both turned 30? Looks like someone owes me \$100. -J."]

"Palm Powered™ handhelds can do just about anything, anytime. Drop an email, fax a lunch order, check inventory. That's taking the Internet with you. Simply amazing.

Complaint

Simply Palm"

[An extremely fine print disclosure, in approximately 4-point type, running along the side of the ad in poorly-contrasting, white text against a light-colored background, states in part:

"Application software and hardware add-ons may be optional and sold separately. Apofications [sic] may not be available on all Palm handhelds."/]

E. (Exhibit E: Palm IIIxe product packaging)

[Front panel of the package]

" **Access the Web***
 Includes AvantGo
 Internet Messaging & E-mail*
 Fortified with Yahoo!
 AOL Ready!"

[Depiction of a Palm IIIxe]

[Back panel of the package]

"Features & Benefits

Internet & E-mail Access
Where and when you want it.."

[Top panel of the package]

"Internet & E-mail Access"

[Right side panel of the package]

"Compatible Software

Complaint

E-mail & Internet Connectivity*

- AOL Mailsm
- AvantGo
- Earthlink
- Eudora Pro
- Lotus Notes
- Microsoft Outlook & Outlook Express
- MultiMail Pro
- Netscape Communicator
- Yahoo! Messenger & Yahoo! Mail
- And other Internet e-mail services

. . .

*See other side panel for more information."

[Left side panel of the package]

"Technical Information

. . .

*Remote E-mail & Internet Access Requirements

Mail application requires modem or handset (sold separately) in addition to an e-mail account. Some e-mail applications may require optional linking software (sold separately)."

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that
 - A. Palm PDAs, as sold, contain everything that consumers need to access the Internet and their email accounts, wirelessly.
 - B. Palm PDAs, as sold, can perform common business functions such as data base management, custom form creation, and viewing Microsoft Word and Excel documents.

6. In truth and in fact,

Complaint

- A. Palm PDAs, as sold, other than the Palm VII model line, do not contain everything that consumers need to access the Internet and their email accounts, wirelessly. In order to wirelessly access the Internet and their email accounts using the Palm m100, Palm III, or Palm V model lines, consumers must purchase and carry a separate wireless modem or a device to connect the Palm to certain mobile telephones. Many mobile telephones currently in use in the United States are not compatible with Palm PDAs.
- B. Palm PDAs, as sold, cannot perform common business functions such as data base management, custom form creation, and viewing Microsoft Word and Excel documents. To perform these functions using Palm PDAs, consumers must purchase and install additional software.

Therefore, the representations set forth in Paragraph 5 were, and are, false or misleading.

- 7. In its advertisements and packaging, respondent has represented that consumers can use Palm PDAs, as sold, to access the Internet and their email accounts wirelessly. In these advertisements and packaging, respondent has failed to disclose or failed to disclose adequately that in order to wirelessly access the Internet and their email accounts using the Palm m100, Palm III, or Palm V model lines, consumers must purchase and carry a separate wireless modem or a device to connect the Palm to certain mobile telephones. This fact would be material to consumers in their purchase or use of the products. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.
- 8. In its advertisements, respondent has represented that consumers can use Palm PDAs, as sold, to perform common business functions such as data base management, custom form creation, and viewing Microsoft Word and Excel documents.

Complaint

In these advertisements, respondent has failed to disclose adequately that in order to perform these functions using Palm PDAs, consumers must purchase and install additional software. This fact would be material to consumers in their purchase or use of the products. The failure to disclose this fact, in light of the representations made, was, and is, a deceptive practice.

9. In its advertisements, respondent has represented that consumers can use the Palm VII model line to access the Internet and their email accounts wirelessly. Respondent has failed to disclose or failed to disclose adequately that to access the Internet and email accounts wirelessly using the Palm VII model line, consumers must subscribe to Palm.Net, a proprietary for-fee service. 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.
10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

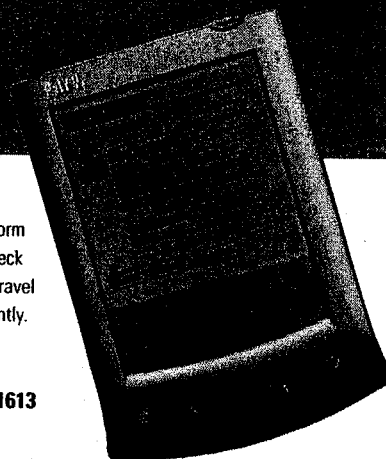
THEREFORE, the Federal Trade Commission this seventeenth day of April, 2002, has issued this complaint against respondent.

By the Commission.

PERFECT FOR READING E-MAIL WHEN YOU'RE "OUT SICK" AT THE BALL GAME.

Every now and then the chains come off and you find yourself away from your desk. (Reluctantly, of course.) No problem. The Palm™ platform lets you bring the office with you. Read e-mail. Draft memos. And check appointments. It's also perfect for reading news, entertainment and travel information. Wherever you want. Without blowing your cover. Efficiently. Elegantly. Simply.

Visit us at the Macworld Expo in the Datavision Booth #1613
or the J&R Computer World Booth #941.



Database Manager

Intranet Access

Custom Form Creation

Expense Reports

Maps

Send & Receive Faxes

Digital Camera

Sales Force Automation

Infrared Beaming

View Word & Excel

Internet Access

E-Mail

Flight Schedules

Shareware

Inventory Management

Stock Quotes & Trading

Customer Relationship Mgt.

Link to Outlook

Paging

Syncing with a PC

Business Card Scanner

Simply Palm™
www.palm.com

EXHIBIT A



"THE MARKET'S DOWN. BUY!"

Database Manager
Intranet Access
Custom Form Creation
Expense Reports
GPS
Send & Receive Faxes
Digital Camera
Sales Force Automation
Infrared Beaming
View Word & Excel
Wireless Access
Flight Schedules
Shareware
Inventory Management
Stock Quotes & Trading
Customer Relationship Mgt.
Link to Outlook
Paging
Syncing with a PC
Business Card Scanner

Simply Palm
www.palm.com

Online trading has revolutionized personal investing. Now the Palm® handheld takes that revolution wireless. With access to the internet, the Palm platform lets you check market news and make trades along with its scores of other business and personal applications. It's all about going where life takes you - and bringing your portfolio along. Efficiently. Elegantly. Simply. For more information visit www.palm.com.

©2000 Palm, Inc. All rights reserved. Palm, Simply Palm and the Palm logo are trademarks of Palm, Inc. or its subsidiaries. Other brand names may be trademarks or registered trademarks of their respective holders. Application software and hardware add-ons may be optional and sold separately.

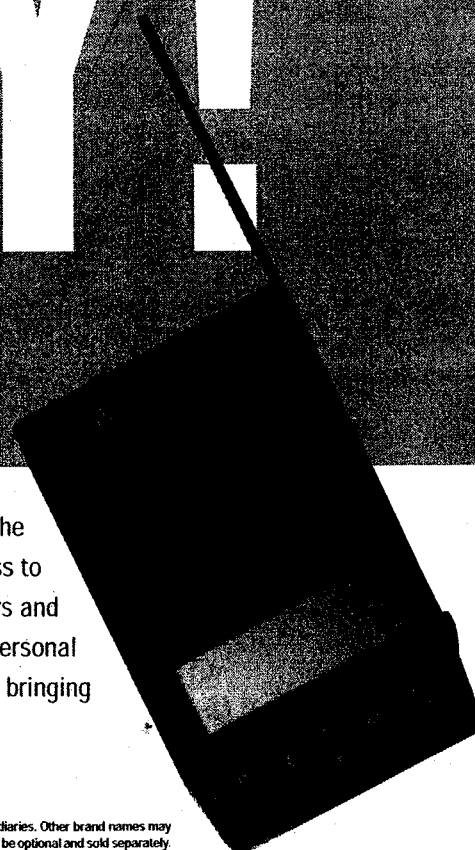


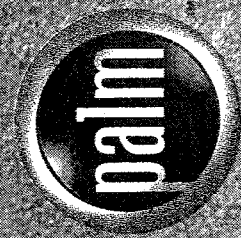
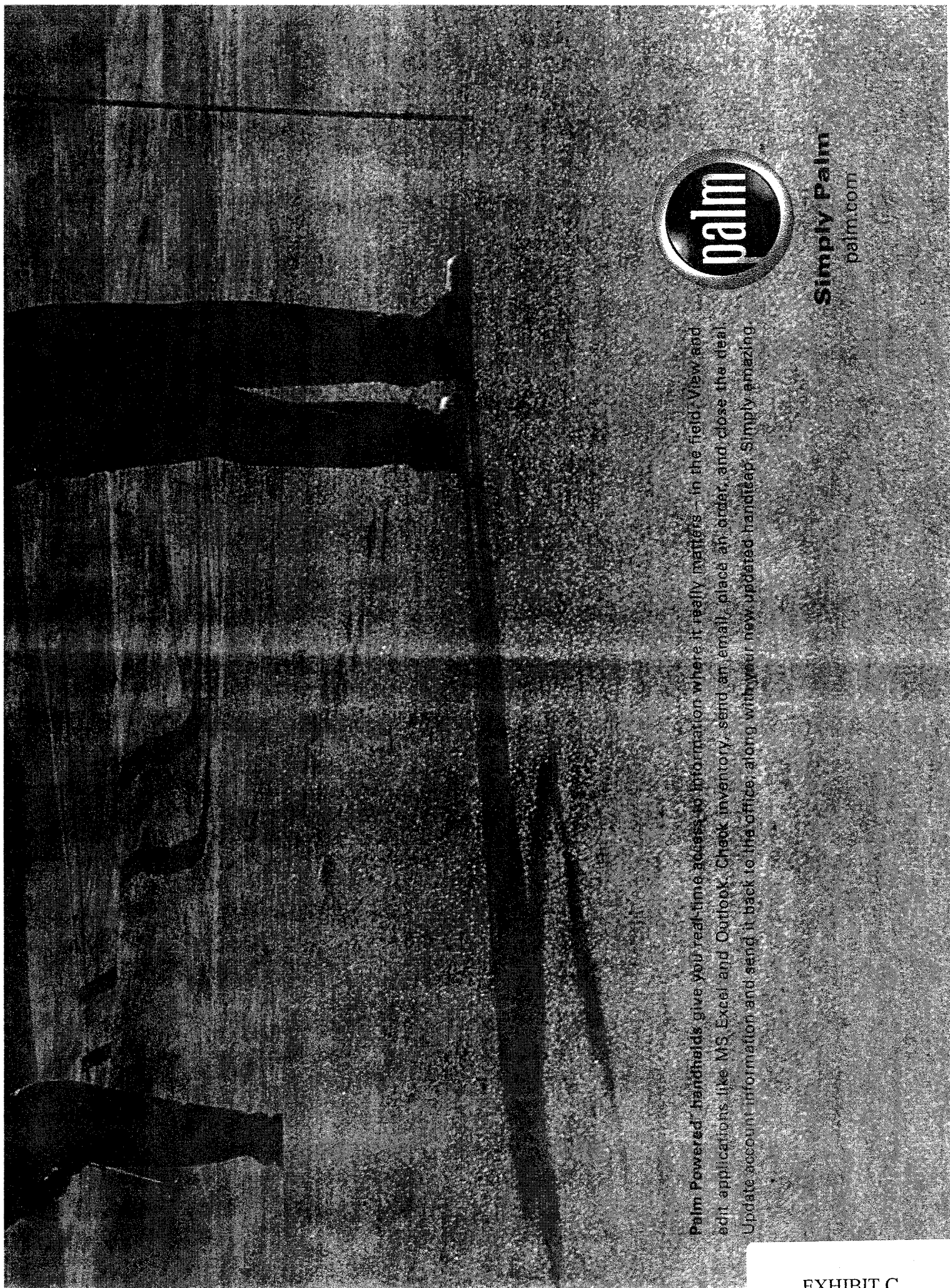
EXHIBIT B

Siebel Sales ▼ **My Activities**

Today:
70% less time with paper
70% more time closing the deal

O.K. 

EXHIBIT C



Simply Palm
palm.com

Palm Powered[®] handhelds give you real-time access to information where it really matters — in the field. View and edit applications like MS Excel and Outlook. Check inventory, send an email, place an order, and close the deal. Update account information and send it back to the office, along with your new updated handteap. Simply amazing.

Done Reply Reply

-]

Looks like someone owes me \$100

Remember that bet we made
when we both turned 30?

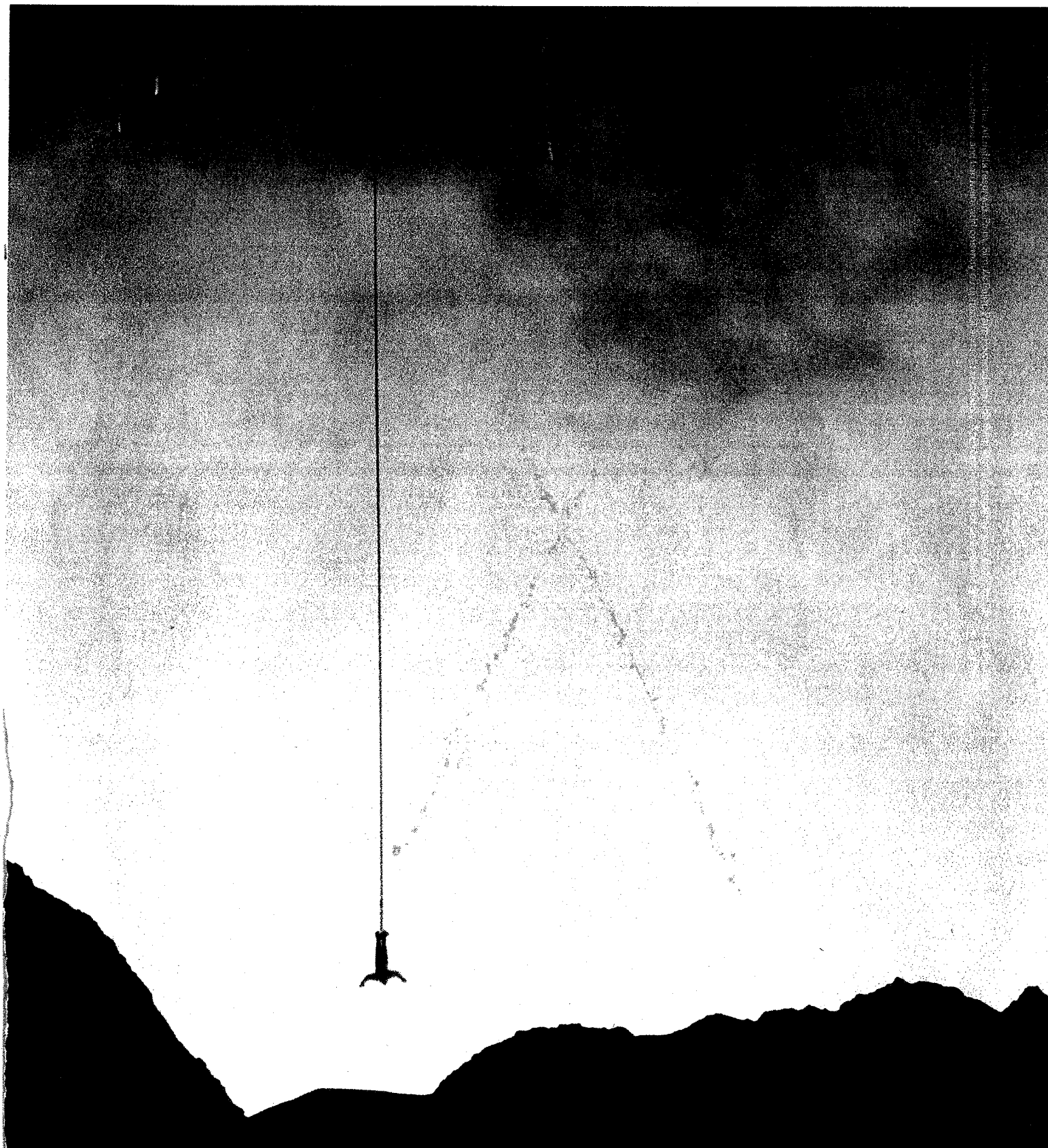
Scott,

5 Sent

Palm Powered handhelds can do just about anything, anytime. Drop an email, fax a lunch

EXHIBIT D

© 2000 Palm, Inc. All rights reserved. Palm, the Palm logo, and Palm OS are trademarks of Palm, Inc. in the U.S. and other countries. All other trademarks are the property of their respective owners.



order, check inventory. That's taking the Internet with you. Simply amazing.



Simply Palm
palm.com

EXHIBIT D

Link to Microsoft Outlook*
Chapura PocketMirror
Access the Web*
AvantGo
Internet Messaging & E-mail*
Fortified with Yahoo!
AOL Ready!

Includes



||| **xg**
Handheld

Value & Function

Add even more applications.



IIIxe
Handheld

Features & Benefits

Instant & E-mail Access

Where and when you want it.

Powerful Yet Simple

You have the power to get the most from your handheld computer right out of the box.

Background Your Data

Back to update and exchange information between your handheld and PC with the touch of a button—then access your data from your PC or while on the go.

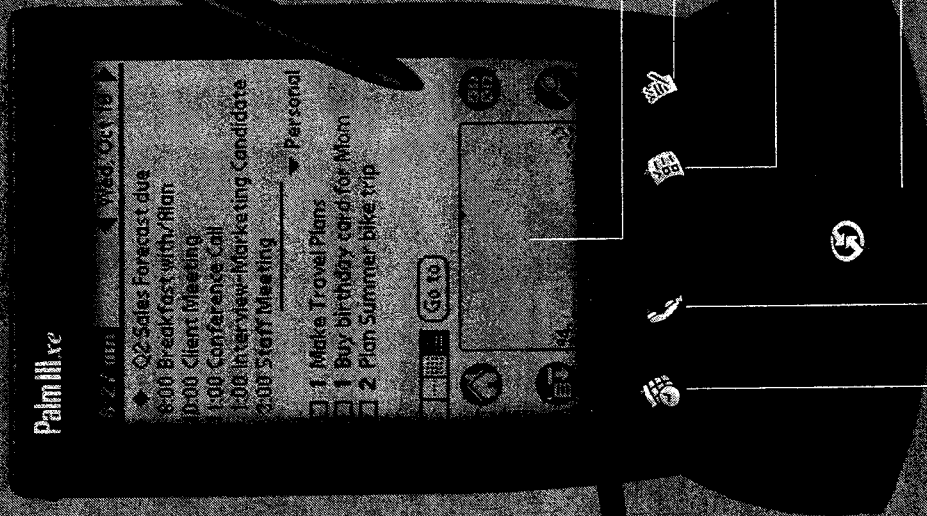
Heavy Upgradeable

Included fast memory allows you to keep up to date with new features and software updates.

Do More with Less

Optimized system software for handheld computing lets you do more with less data and applications.

Handheld shown at actual size with HotSync Cradle.



Graffiti® Area

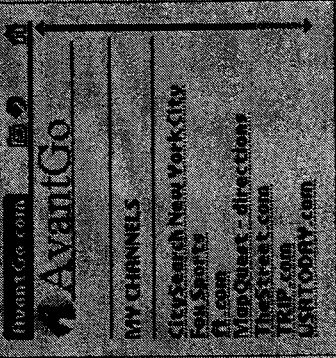
Memo Pad

To Do List

HotSync® Cradle

Date Book

Address Book



Using the included Palm™ Mail client or other available e-mail add-ons, you can synchronize your messages and take them with you on the go.

Thousands of Solutions

From games to personal productivity and enterprise-class software, choose from a variety of software and hardware add-ons to extend the capabilities of your handheld.

Enter Data Your Way

Enter it from your PC, use the on-screen keyboard, write with Graffiti software, "beam" data and applications, or enter it with a compatible portable keyboard.



EXHIBIT E



||| x8
Handheld

Powerful Yet Simple
Internet & E-mail Access
Thousands of Solutions
Easily Upgradeable
Safeguard Your Data

EXHIBIT E



IIIxe
Handheld

Compatible Software

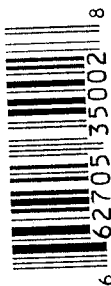
E-mail & Internet Connectivity*

AOL MailSM
iCloud
Earthlink
Eudora Pro
Lotus Notes
Microsoft Outlook & Outlook Express
MultiMail Pro
Netraze Communicator
Yahoo! Messenger & Yahoo! Mail
And other Internet e-mail services

Other Applications

ACT!
FileMaker Pro
Franklin Planner
GoldMine
Lotus Organizer
Meeting Maker

*Some software applications sold separately unless otherwise indicated. Check with software publisher for Macintosh compatibility.
See other side panel for more information.



SKU



3C80304U



P/N 340-1848

EXHIBIT E



IIIxe
Handheld

Technical Information

Contents

- Palm™ handheld
- Two AAA alkaline batteries
- CD-ROM
- Palm Desktop Software
- AvantGo, link to Microsoft Outlook, & games
- AOL® Ready!
- Fortified with Yahoo!
- HotSync® cradle
- Getting Started & Handbook documentation
- 8- to 25-pin adapter
- Protective flip cover

Product Information

- Palm OS® software v3.5
- Storage capacity of 8 MB is large enough to allow for the following or any similar combination:
 - 400 e-mail messages
 - 50 add-on applications**
 - 8 years of appointments
 - 8,000 addresses
 - 300 to-do items
 - 1,000 memos
- **Based on average size of 50K; application size may vary.
- Size and weight:
4.7" x 3.2" x 0.7", 6 oz.
- Infrared port
- Backlit display
- Desktop import & export formats: CSV, TAB delimited, & TXT
- Direct export to Microsoft Word & Excel
- Handheld applications include: Mail, Date Book, Address Book, To Do List, Memo Pad, Expense, & Calculator

System Requirements

- IBM-compatible 486 PC or higher
- Windows 95/98/2000/NT 4.0
- 8 MB RAM minimum (34 MB recommended for Windows 2000)
- One available serial port
- Mouse
- 20 MB available hard disk space
- CD-ROM drive

USB & Macintosh Compatibility

PalmConnect® kit required; includes adapter, cable, and Palm Desktop Software for Macintosh (sold separately).

*Remote E-mail & Internet Access Requirements

Mail application requires modem or handset (sold separately) in addition to an e-mail account. Some e-mail applications may require optional linking software (sold separately).

EXHIBIT E

Decision and Order

DECISION AND ORDER

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

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

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

1. Respondent Palm, Inc. is a Delaware corporation with its principal office or place of business at 5470 Great America Parkway, Santa Clara, California 95054.
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.

Decision and Order

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "respondent" shall mean Palm, Inc., 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, online services and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement if the claim triggering the disclosure is presented by both audio and visual means. In any claim presented solely through visual or audio means, the disclosure may be made through the same means in which the claim is presented. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location, sufficiently noticeable 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 sufficiently noticeable for an ordinary consumer to

Decision and Order

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. "General-purpose ISP service" shall mean the category of services that allow consumers to access the Internet from personal computers or that is generally understood by consumers to be necessary for wireless access to the Internet. It shall not include a specific Internet access service, if respondent's product requires use of that specific service to access the Internet.

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 manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any personal digital assistant or handheld Internet or email access device, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication:

Decision and Order

- A. that the product is able to perform any common business function that it cannot perform without additional products or services that consumers must purchase; or
- B. that wireless Internet or email service coverage for such product is available everywhere or almost everywhere in the United States.

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 in order to wirelessly access the Internet or email accounts, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication any performance characteristic of such product relating to accessing the Internet or email accounts.

III.

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, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the ability of any such product to perform any function that requires the purchase of additional products or services unless respondent discloses, clearly and conspicuously:

- A. when such function involves accessing the Internet or email accounts, 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

Decision and Order

purchase in order to access the Internet or email accounts using such product; or

- B. when such function does not involve accessing the Internet or email accounts, that additional products must be purchased in order to perform such function using such product.

IV.

IT IS FURTHER ORDERED that the provisions of this Order shall not apply to any label or labeling printed prior to 30 days after the date respondent executed the consent agreement and shipped by respondent to distributors or retailers prior to 120 days after the date of service of this Order.

V.

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

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

Decision and Order

VI.

IT IS FURTHER ORDERED that respondent Palm, Inc., and its successors and assigns shall, for a period of five (5) years, deliver a copy of this order to all principals, officers, directors, and managers, and to all 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.

VII.

IT IS FURTHER ORDERED that respondent Palm, 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.

Decision and Order

VIII.

IT IS FURTHER ORDERED that respondent Palm, 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 April 17, 2022, 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

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 Palm, Inc. ("Palm").

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 about Palm handheld computers or personal digital assistants ("PDAs"). This matter concerns allegedly false and deceptive advertising claims made in advertisements regarding the ability of Palm devices to wirelessly access the Internet and email accounts and to perform other functions.

According to the FTC complaint, Palm misrepresented that Palm PDAs, as sold, contain everything that consumers need to wirelessly access the Internet and their email accounts. In fact, in order to wirelessly access the Internet and email accounts using Palm PDAs, other than the Palm VII model line, consumers must purchase and carry a separate wireless modem or a device to connect the Palm to certain mobile telephones; and, moreover, many mobile telephones currently in use in the U.S. are not compatible with Palm PDAs. The complaint also alleges that in representing that consumers can use Palm PDAs, as sold, to access the Internet and their email accounts wirelessly, Palm failed to disclose or failed to disclose adequately that in order to wirelessly access the Internet and their email accounts, consumers must purchase and carry a separate wireless modem or a device to connect the Palm to certain mobile telephones. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

Analysis

The proposed complaint also challenges as false the claim that Palm PDAs, as sold, can perform common business functions such as data base management, custom form creation, and viewing Microsoft Word and Excel documents. To perform these functions using Palm PDAs, consumers must purchase and install additional software. The complaint also alleges that in representing that consumers can use Palm PDAs, as sold, to perform these functions, respondent failed to disclose or failed to disclose adequately that in order to perform these functions using Palm PDAs, consumers must purchase and install additional software. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

Finally, the complaint alleges that in representing that consumers can use the Palm VII model line to access the Internet and their email accounts wirelessly, Palm failed to disclose or failed to disclose adequately that consumers must subscribe to Palm.Net, a proprietary for-fee service. The complaint alleges that the failure to disclose this material fact is a deceptive practice.

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

Part I of the proposed order prohibits respondent from making misrepresentations that any PDA or handheld Internet or email access device can perform any common business function that it cannot perform without additional products or services that consumers must purchase. Part I also prohibits misrepresentations that wireless Internet or email service coverage for the product is available everywhere or almost everywhere in the U.S.

Part II of the proposed order prohibits misrepresentations about performance characteristics relating to Internet or email account access of any non-wireless PDA or handheld Internet or email access device (*i.e.*, one that requires the use of an additional device in order to access the Internet or email accounts wirelessly).

Analysis

Part III requires that when respondent makes any claims about the ability of any PDA or handheld Internet or email access device to perform any function that requires the purchase of additional products or services, it must make a clear and conspicuous disclosure, depending upon the function being discussed. When the function involves accessing the Internet or email accounts, respondent must disclose 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. When the function does not involve accessing the Internet or email accounts, respondent must disclose that additional products must be purchased in order to perform such function(s).

Part IV of the proposed order provides that, for up to 120 days after service of the order, respondent may continue to ship products from existing stock in packaging with nonconforming labeling, as long as the packaging was printed less than 30 days after the date respondent signed the consent agreement.

Parts VI through IX require Palm 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 X 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 interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

DEUTSCHE GELATINE-FABRIKEN STOESS AG, ET AL.

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

*Docket C-4045; File No. 0110117
Complaint, April 17, 2002--Decision, April 17, 2002*

This consent order addresses the acquisition by Respondent Deutsche Gelatine-Fabriken Stoess AG (“DGF Stoess”), the largest world and United States producer of pigskin and beef hide gelatin – used particularly by the food industry (in products such as gelatin desserts, marshmallows, gummy candies and other confections) and the pharmaceutical industry (in products such as soft and hard capsules and tablet coatings) – of the gelatin business of Respondent Goodman Fielder Limited. The order, among other things, prohibits DGF Stoess from acquiring Goodman Fielder’s entire gelatin business, as initially proposed; rather, Goodman Fielder will retain its United States and Argentine gelatin assets, collectively representing approximately 40 percent of the original proposed acquisition. The order also prohibits DGF Stoess from buying any of the retained gelatin assets without prior Commission approval. In addition, the order prohibits Goodman Fielder from selling any of the retained gelatin assets to DGF Stoess – or to SKW, the third leading supplier worldwide of pigskin and beef hide gelatin – or from selling less than the complete package of retained assets to anyone without prior Commission approval. The order also requires Goodman Fielder to provide prior notice to the Commission of any other sale of the retained assets.

Participants

For the Commission: *James H. Holden, Jr., Jonathan S. Klarfeld, Jay C. Campbell, Ann Malester, Eric D. Rohlck, Elizabeth A. Piotrowski, Geary Gessler and Elizabeth Callison..*

For the Respondents: *Steven C. Sunshine, Shearman & Sterling, and Robert S. Schlossberg, Morgan, Lewis & Bockius.*