

Complaint

IN THE MATTER OF

**TIM R. WOFFORD, INDIVIDUALLY AND AS AN
OFFICER OF OKIE CORPORATION**

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

*Docket C-4061; File No. 0123191
Complaint, October 8, 2002--Decision, October 8, 2002*

This consent order addresses cash rebate offers made by OKie Corporation, and by Respondent Tim R. Wofford, an officer of the corporation – who advertised, labeled, offered for sale, sold, and distributed computer peripheral products to the public, including modems, CD-Rom drive kits, and recordable compact disks – to consumers who purchased their computer peripheral products. The order, among other things, prohibits the respondent from failing to disclose all terms, conditions, or other limitations of a rebate offer on the rebate form. The order also requires the respondent to disclose in any rebate advertising that the rebate offer requires consumers to disclose a fax number and/or email address on their rebate form if such is the case. In addition, the order prohibits the respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers; from failing to provide such rebates within the time specified, or if no time is specified, within thirty days; and from violating any provision of the Mail or Telephone Order Rule in connection with rebates in the form of merchandise. The order also prohibits the respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time he specifies for delivery, or if no time is specified, within thirty days, unless he offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Participants

For the Commission: *Kerry O'Brien, Linda K. Badger, Erika Wodinsky, and Jeffrey Klurfeld.*

For the Respondent: *John Cullen.*

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COMPLAINT

The Federal Trade Commission, having reason to believe that Tim R. Wofford, individually and as an officer of OKie 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 Tim R. Wofford is the president and owner of OKie Corporation (“OKie”). Individually or in concert with others, respondent formulated, directed, or controlled the policies, acts, or practices of OKie, including the acts or practices alleged in this complaint. He resides at 68 Donna Road, Needham, MA 02494-1516.
2. OKie is a Delaware corporation with its principal office or place of business at 283A Centre Street, Holbrook, MA 02343. OKie did business as Prime Peripherals. On November 1, 2001, OKie filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, in the United States Bankruptcy Court for the District of Massachusetts, Case No. 01-18390-JNF.
3. Respondent has advertised, labeled, offered for sale, sold, and distributed computer peripheral products to the public, including Prime Peripheral brand modems, CD-Rom drive kits, and recordable compact disks.
4. 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.

FALSE SHIPMENT REPRESENTATIONS

5. Respondent has disseminated or has caused to be disseminated advertisements and rebate forms for computer peripheral products, including but not necessarily limited to the attached Exhibits A

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through E. These advertisements and rebate forms contain the following statements:

- A. “MOST PEOPLE JUST SEE OUR
GREAT
PRICES
ENTREPRENEURS SEE THE
LOW PRICES AND OPPORTUNITIES
TO SAVE THEIR DATA...
AND THEIR MONEY!

FREE!
After Rebate

$\$59.99 - \$14.99 - \$45 = \0
Reg. Price Instant Rebate Mail-in Rebate Final Cost

3 Days Only!
Sunday - Tuesday

PRIME PERIPHERALS
200-Pack CD-R Spindle

....
Limit 1 Rebate”

(Exhibit A, OfficeMax print advertisement placed as free standing insert in newspapers).

- B. “FREE
AFTER
REBATE
Some people only see free after rebate.
Entrepreneurs see an opportunity to make money on their savings.

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PRIME PERIPHERALS

56K V.90 Modem

....

$$\text{\$29.}^{99} - \text{\$29.}^{99} = \text{\$0}$$

Reg. Price Mail-in Rebate Final Cost

PRIME PERIPHERALS

50x CD-ROM Drive Kit

....

$$\text{\$45} - \text{\$45} = \text{\$0}$$

Reg. \\$59.99 Mail-in Rebate Final Cost”

(Exhibit B, OfficeMax print advertisement placed as free standing insert in newspapers).

C. “VALID ONLY 2/18/01-2/20/01

....

Save \$45 at OfficeMax on Prime Peripherals™

200-pack CD-R 80 Minute 16x certified blank media (UPC 6-42184-75200-1)

Complete this coupon and send with a copy of **sales receipt** & upc label from package by mail to:

Prime Peripherals Offer #45

PO Box 226

Randolph, MA 02368

Mail my check to:

Name _____

Address _____

City _____ State _____ Zip code _____ Fax _____

Telephone (____) _____ Email address _____

I have complied with the requirements of this offer

45 Required Signature _____ Date _____

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TERMS AND CONDITIONS—Offer good on purchases at OfficeMax from **2-18-01 through 2-20-01**. You must submit this original rebate form with a copy of your sales receipt and the original upc label from package. Photocopies of upc will not be accepted. Your request must be postmarked by MARCH 3, 2001.... Limit ONE rebate per person, household, family or address. This offer cannot be combined with any other offer. Requests from PO Boxes not accepted, and requests with invalid or undeliverable mailing address will be rejected. Offer limited to end-users only. Requests for multiple rebates from groups, clubs, or organizations will not be honored. Your rebate rights cannot be assigned or transferred, and this offer is void where taxed, restricted, or prohibited by law.... Rebate checks will be mailed in approx. 8-10 weeks. If you have not received your check within 12 weeks visit **www.forrebates.com** or call **1-877-783-3546**.”

(Exhibit C, rebate form for Prime Peripherals 200-pack CD-R).

D. “Save \$45
at OfficeMax
on *Prime Peripherals*[™]
50X CD-Drive...

FREE up to \$29 ⁹⁹
at OfficeMax
on *Prime Peripherals*[™]
5900 56K modem...
After mail-in Rebate

*Valid only in Continental U.S. Stores 3/11/01-3/17/01;
Alaska and Hawaii 3/18/01-3/24/01; Puerto Rico and St.
Thomas 3/25/01-3/31/01.

Complete this coupon and send with a copy of **sales receipt**
& upc label from package by mail to:

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RCG Prime Peripherals Offer #50 or 51 PO Box 226
Randolph, MA 02368

Mail my check to:

Name _____

Address _____

City _____ State _____ Zip code _____ Fax _____

Telephone (____) _____ Email address _____

I have complied with the requirements of this offer

Required Signature _____ Date _____

Please check box for appropriate rebate:

☐ Offer #50 ☐ Offer #51

TERMS AND CONDITIONS—Offer good on purchases at OfficeMax US, Puerto Rico and St. Thomas stores only. You must submit this original rebate form with a copy of your sales receipt and the original upc label from package. Photocopies of upc will not be accepted. Your request must be postmarked by APRIL 21, 2001.... Limit ONE rebate per person, household, family or address. This offer cannot be combined with any other offer. Requests from PO Boxes not accepted, and requests with invalid or undeliverable mailing address will be rejected. Offer limited to end-users only. Requests for multiple rebates from groups, clubs, or organizations will not be honored. Your rebate rights cannot be assigned or transferred, and this offer is void where taxed, restricted, or prohibited by law.... Rebate checks will be mailed in approx. 8-10 weeks. If you have not received your check within 12 weeks visit **www.forrebates.com** or call **877-783-3546**.”

(Exhibit D, rebate form for Prime Peripherals 50X CD-Drive and 5900 56K modem).

- E. **“Save \$20 on Prime Peripherals 50X CD-Rom at CompUSA (SKU #273808)**

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Complete this coupon and send with **copy of sales receipt**
& upc label from package by mail to: Prime Peripherals
Offer #32

PO Box 821
New Rochelle, NY 10802-0821

Mail my check to:

Name _____

Address _____

City _____ State _____ Zip code _____ Fax _____

Telephone (____) _____ Email address _____

I have complied with the requirements of this offer

32 **Required** Signature _____ Date _____

TERMS AND CONDITIONS—Offer good on purchases at CompUSA from 12-16-00 through 2-23-00. You must submit this original rebate form with a copy of your sales receipt and the original upc label from package. Photocopies of upc will not be accepted. Your request must be postmarked by 1-10-01.... Limit ONE rebate per person, receipt, household, family or address. This offer cannot be combined with any other offer. Requests from PO Boxes not accepted, and requests with invalid or undeliverable mailing address will be rejected. Offer limited to end-users only. Requests for multiple rebates from groups, clubs, or organizations will not be honored. Your rebate rights cannot be assigned or transferred, and this offer is void where taxed, restricted, or prohibited by law.... Rebate checks will be mailed in approx. 6-8 weeks. If you have not received your check within 8 weeks visit **www.tcarebates.com** or call 800-390-2344.”

(Exhibit E, rebate form for Prime Peripherals 50X CD-Rom).

6. Through the means described in Paragraph 5, respondent has represented, expressly or by implication, that:

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- A. Respondent will mail cash rebates to purchasers of Prime Peripherals computer peripheral products within either six to eight or eight to ten weeks of respondent's receipt of their requests.
- B. Respondent will mail cash rebates to purchasers of Prime Peripherals computer peripheral products within a reasonable period of time.

7. In truth and in fact:

- A. In numerous instances, respondent did not mail cash rebates to purchasers of Prime Peripherals computer peripheral products within either six to eight or eight to ten weeks of respondent's receipt of their requests. In many instances, consumers never received their cash rebates from respondent or experienced delays ranging from one to six months.
- B. In numerous instances, respondent did not mail cash rebates to purchasers of Prime Peripherals computer peripheral products within a reasonable period of time. In many instances, respondent never sent consumers their cash rebates or sent them months after receiving consumers' rebate requests.

Therefore, the representations set forth in Paragraph 6 were, and are, false or misleading.

**UNILATERAL MODIFICATION OF TERMS OR
CONDITIONS OF REBATE OFFER: UNFAIR BUSINESS
PRACTICE**

8. In the advertising and sale of Prime Peripherals computer peripheral products, respondent has offered, expressly or by implication, that consumers would receive cash rebates if they purchased a Prime Peripherals computer peripheral product and submitted a rebate form with proof of purchase. In making this

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offer, respondent did not require that consumers submit a telephone number, fax number, or email address to be eligible to receive the offered cash rebates. In numerous instances, consumers accepted respondent's rebate offer by purchasing those products and submitting rebate forms with proof of purchase.

9. After receiving rebate requests in conformance with the offer described in Paragraph 8, respondent unilaterally modified the terms or conditions of the rebate offer by requiring that, in addition to submitting a rebate form with proof of purchase, consumers had to submit a telephone number, a fax number, and an email address to receive a rebate. In breach of the original rebate offer, respondent rejected numerous rebate requests from consumers because they did not submit a telephone number, a fax number, and/or an email address.

10. Respondent's practice described above thus has caused substantial and ongoing injury to purchasers of respondent's products that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This practice was, and is, an unfair act or practice.

**FAILURE TO DISCLOSE TERMS OR CONDITIONS OF
REBATE OFFER**

11. In the advertising and sale of Prime Peripherals computer peripheral products, respondent has represented, expressly or by implication, that purchasers of Prime Peripherals computer peripheral products would receive cash rebates if they purchased those products and submitted a rebate form with proper documentation. Respondent has failed to disclose that consumers are required to possess and disclose their telephone number, fax number, and email address on a rebate form to receive those cash rebates. These facts would be material to consumers in their purchase or use of the products. The failure to disclose these facts, in light of the representation made, was, and is, a deceptive practice.

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12. 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 eighth day of October, 2002, has issued this complaint against respondent.

By the Commission.

MOST PEOPLE JUST SEE OUR GREAT PRICES

ENTREPRENEURS SEE THE
LOW PRICES AND OPPORTUNITIES
TO SAVE THEIR DATA...
AND THEIR MONEY!

OfficeMax®
officemax.com

YOU SUPPLY THE AMBITION.
WE'LL SUPPLY EVERYTHING ELSE.™



3 Days Only!
Sunday - Tuesday

\$59⁹⁹ - \$14⁹⁹ - \$45 = \$0
Reg. Price Instant Rebate Mail-In Rebate Final Cost

PRIME PERIPHERALS
200-Pack CD-R Spindle
80-minute audio capacity, 700MB data capacity per disk.
Limit 1 Rebate 2001-5591

GEORGIA-PACIFIC Copier Paper
5-ream carton (2,500 sheets).
8 1/2" x 11" 20 lb., 84 brightness.
Performs well in copiers, fax
machines, inkjet and laser printers.
0611-3859

Buy 1, Get 1 **\$15⁹⁹** Per Carton
Limit 2 Offers

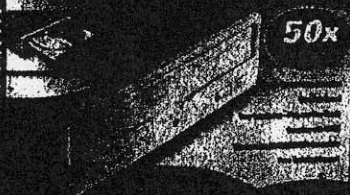


Exhibit A

AFTER REBATE

FREE WOOD

CD-ROM DRIVE KIT



INTERNAL
Modem Card

PRIME PERIPHERALS

56K V.90 Modem

Enables you to connect up to
33.6Kbps to the Internet.

~~\$29.99~~ - ~~\$29.99~~ = \$0

PRIME PERIPHERALS

50x CD-ROM Drive Kit

high speed audio extraction.
Easy installation.

~~\$45~~ - ~~\$45~~ = \$0

Reg. \$59.99

OfficeMax

officemax.com

VALID ONLY 2/18/01-2/20/01

THIS COUPON IS NOT VALID IN ALASKA, HAWAII, PUERTO RICO OR ST. THOMAS.

Save \$45 at OfficeMax on Prime Peripherals™

200-pack CD-R 80 Minute 16x certified blank media (UPC 6-42184-75200-1)

Complete this coupon and send with a copy of sales receipt & upc label from package by mail to:

Prime Peripherals Offer #45

PO Box 226

Randolph, MA 02368

Mail my check to:

Name _____

Address _____

City _____ State _____ Zip code _____ Fax _____

Telephone (____) _____ Email address _____

I have complied with the requirements of this offer

45 Required Signature _____ Date _____

TERMS AND CONDITIONS—Offer good on purchases at OfficeMax from 2-18-01 through 2-20-01. You must submit this original rebate form with a copy of your sales receipt and the original upc label from package. Photocopies of upc will not be accepted. Your request must be postmarked by MARCH 3, 2001. Prime Peripherals is not responsible for lost or misdirected mail. Limit ONE rebate per person, household, family or address. This offer cannot be combined with any other offer. Requests from PO Boxes not accepted, and requests with invalid or undeliverable mailing address will be rejected. Offer limited to end-users only. Requests for multiple rebates from groups, clubs, or organizations will not be honored. Your rebate rights cannot be assigned or transferred, and this offer is void where taxed, restricted, or prohibited by law. Keep copies of all materials submitted; originals become Prime Peripherals property and will not be returned.

WARNING: Fraudulent submissions could result in federal prosecution under mail fraud status (Title 18, USC Sections 1341 & 1342). Rebate checks will be mailed in approx. 8-10 weeks. If you have not received your check within 12 weeks visit www.forrebates.cbm or call 1-877-783-3546.

OFFER VALID ON PURCHASES FROM 2-18-01 THROUGH 2-20-01

ONE WEEK ONLY*

Save \$45
at OfficeMax
on Prime Peripherals™
50X CD-Drive
(UPC 6-42184-00050-8)

FREE up to \$29⁹⁹
at OfficeMax
on Prime Peripherals™
5900 56K modem
#51 (UPC 6-42184-05900-1) After mail-in Rebate

*Valid only in Continental U.S. Stores 3/11/01-3/17/01; Alaska and Hawaii 3/18/01-3/24/01;
Puerto Rico and St. Thomas 3/25/01-3/31/01.

Complete this coupon and send with a copy of **sales receipt** & upc label from package by mail to:
RCG Prime Peripherals Offer #50 or 51 PO Box 226 Randolph, MA 02368

Mail my check to:

Name _____

Address _____

City _____ State _____ Zip code _____ Fax _____

Telephone (_____) _____ Email address _____

I have complied with the requirements of this offer

Required Signature _____ Date _____

Please check box for appropriate rebate: ☐ Offer #50 ☐ Offer #51

TERMS AND CONDITIONS—Offer good on purchases made at OfficeMax US, Puerto Rico and St. Thomas stores only. You must submit this original rebate form with a copy of your sales receipt and the original upc label from package. Photocopies of upc will not be accepted. Your request must be postmarked by APRIL 21, 2001. Prime Peripherals is not responsible for lost or misdirected mail. Limit ONE rebate per person, household, family or address. This offer cannot be combined with any other offer. Requests from PO Boxes not accepted, and requests with invalid or undeliverable mailing address will be rejected. Offer limited to end-users only. Requests for multiple rebates from groups, clubs, or organizations will not be honored. Your rebate rights cannot be assigned or transferred, and this offer is void where taxed, restricted, or prohibited by law. Keep copies of all materials submitted: originals become Prime Peripherals property and will not be returned. Rebate checks will be mailed in approx. 8-10 weeks. If you have not received your check within 12 weeks visit www.forrebates.com or call **877-783-3546**.
WARNING: Fraudulent submissions could result in federal prosecution under mail fraud status (Title 18, USC Sections 1341 & 1342).

50/51

OFFER #32

**Save \$20 on Prime Peripherals 50X CD-Rom
at CompUSA (SKU #273808)**

Complete this coupon and send with copy of sales receipt & upc label from package by mail to:

Prime Peripherals Offer #32
PO Box 821
New Rochelle, NY 10802-0821

Mail my check to:

Name _____

Address _____

City _____ State _____ Zipcode _____ Fax _____

Telephone () _____ Email address _____

I have complied with the requirements of this offer

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Required Signature _____ Date _____

TERMS AND CONDITIONS - Offer good on purchases at CompUSA from 12-16-00 through 12-23-00. You must submit this original rebate form with a copy of your sales receipt and the original upc label from package. Photocopies of upc will not be accepted. Your request must be postmarked by 1-10-01. Prime Peripherals is not responsible for lost or misdirected mail. Limit ONE rebate per person, receipt, household, family or address. This offer cannot be combined with any other offer. Requests from PO Boxes not accepted, and requests with invalid or undeliverable mailing address will be rejected. Offer limited to end-users only. Requests for multiple rebates from groups, clubs, or organizations will not be honored. Your rebate rights cannot be assigned or transferred, and this offer is void where taxed, restricted or prohibited by law. Keep copies of all materials submitted; originals become Prime Peripherals property and will not be returned. Warning: Fraudulent submission could result in federal prosecution under mail fraud status (Title 18, USC Sections 1341 & 1342). Rebate checks will be mailed in approx. 6-8 weeks. If you have not received your check within 8 weeks visit www.fcarebates.com or call 800-390-2344.

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 Western Region 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 and counsel for the 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 filed thereafter by interested persons pursuant to § 2.34 of its Rules, 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 Tim R. Wofford is an officer of OKie Corporation ("OKie"), a Delaware corporation with its principal office or place of business at 283A Centre Street, Holbrook, MA 02343. Individually or in concert with others, he formulates,

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directs, or controls the policies, acts, or practices of OKie. He resides at 68 Donna Road, Needham, MA 02494-1516.

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 Tim R. Wofford, individually and as an officer of OKie Corporation, his agents, representatives, and employees.
2. “Rebate” shall mean cash, credit towards future purchases, merchandise, services, or any other consideration offered by respondent to consumers who purchase products or services, and which is provided subsequent to the purchase.
3. “Rebate coupon(s) or form(s)” shall mean any means by which a consumer submits a rebate request.
4. “Mail Order Rule” shall mean the Federal Trade Commission’s Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended.
5. “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,

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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 (including, but not limited to a rebate coupon or form), 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.

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

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

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

7. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service in or affecting commerce, shall not:

- A. make any representation about any rebate offer, unless respondent discloses on the rebate coupon or form, clearly and conspicuously, all terms, conditions, or other limitations of the rebate offer.
- B. require a consumer to disclose a fax number or email address on a rebate coupon or form of any rebate offer, unless respondent discloses, clearly and conspicuously, in any advertisement that mentions the rebate offer that the rebate offer requires consumers to disclose a fax number and/or email address on their rebate coupons or forms.
- C. misrepresent, in any manner, expressly or by implication, the time in which any rebate in the form of cash or credit towards future purchases will be mailed, or otherwise provided to purchasers;

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- D. fail to provide any rebate in the form of cash within the time specified, or, if no time is specified, within thirty (30) days;
- E. fail to provide any rebate in the form of credit towards future purchases within the time specified, or, if no time is specified, within thirty (30) days;
- F. violate any provision of the Mail Order Rule in connection with any rebate in the form of merchandise, including failing to provide the rebate within the time specified, or, if no time is specified, within thirty (30) days, unless respondent offers to the purchaser the option of either:
 - 1. consenting to the delay; or
 - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered; or
- G. fail to provide any rebate in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time specified, or, if no time is specified, within thirty (30) days, unless respondent offers to the purchaser the option of either:
 - 1. consenting to the delay; or
 - 2. canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

II.

IT IS FURTHER ORDERED that respondent Tim R. Wofford 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;

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

III.

IT IS FURTHER ORDERED that respondent Tim R. Wofford, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. 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, Washington, D.C. 20580.

IV.

IT IS FURTHER ORDERED that respondent Tim R. Wofford shall, within sixty (60) days after the date of 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 he has complied with this order.

V.

This order will terminate twenty on October 8, 2022, or (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without

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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 an agreement to a proposed consent order from Tim R. Wofford, an officer of OKie Corporation (“OKie”). OKie did business as Prime Peripherals. Mr. Wofford and OKie advertised, labeled, offered for sale, sold, and distributed computer peripheral products to the public, including Prime Peripherals brand modems, CD-Rom drive kits, and recordable compact disks.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will 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 concerns cash rebate offers that respondent and OKie made to consumers who purchased Prime Peripherals computer peripheral products. The complaint alleges that respondent engaged in false advertising and unfair practices relating to these rebate offers. Specifically, the complaint alleges that respondent falsely represented that he would mail cash rebates to purchasers of Prime Peripherals computer peripheral products within either six to eight or eight to ten weeks, or within a reasonable period of time, of respondent's receipt of their requests. In many instances, consumers never received their cash rebates or experienced delays ranging from one to six months.

The complaint also alleges that, in the advertising and sale of Prime Peripherals computer peripheral products, respondent offered that consumers would receive cash rebates if they purchased a Prime Peripherals computer peripheral product and submitted a rebate form with proof of purchase. In making this offer, he did not require consumers to submit a telephone number, fax number, or email address to be eligible to receive the offered cash rebates. In numerous instances, consumers accepted

Analysis

respondent's rebate offer by purchasing those products and submitting rebate forms with proof of purchase. After receiving rebate requests, respondent unfairly modified the terms or conditions of the rebate offer unilaterally by requiring that, in addition to submitting a rebate form with proof of purchase, consumers submit a telephone number, a fax number, and an email address to receive a rebate. In breach of the original rebate offer, respondent rejected numerous rebate requests from consumers because they did not submit a telephone number, a fax number, and/or an email address.

Finally, the complaint alleges that respondent represented that purchasers of Prime Peripherals computer peripheral products would receive cash rebates if they purchased those products and submitted a rebate form with proper documentation, yet failed to disclose that consumers were required to possess and disclose their telephone number, fax number, and email address on a rebate form to receive those cash rebates. The complaint alleges that his failure to disclose these facts was 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 failing to disclose all terms, conditions, or other limitations of a rebate offer on the rebate form. It also requires the respondent to disclose in any rebate advertising that the rebate offer requires consumers to disclose a fax number and/or email address on their rebate form if such is the case. Part I of the proposed order also prohibits respondent from misrepresenting the time in which any cash rebate, or rebate in the form of credit towards future purchases, will be mailed to consumers. It also prohibits respondent from failing to provide such rebates within the time specified, or if no time is specified, within thirty days.

Part I of the proposed order also prohibits respondent from violating any provision of the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise (the "Mail Order Rule") in connection with rebates

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in the form of merchandise. Among other things, the Mail Order Rule prohibits marketers from failing to provide rebates in the form of merchandise within the time they specify for delivery, or if no time is specified, within thirty days, unless they offer consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the merchandise originally offered. Finally, Part I of the proposed order similarly prohibits respondent from failing to provide rebates in the form of services or any other consideration (other than cash, credit towards future purchases, or merchandise) within the time he specifies for delivery, or if no time is specified, within thirty days, unless he offers consumers the option of consenting to a delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the rebate originally offered.

Parts II through IV of the proposed order are reporting and compliance provisions. Part V is a provision “sunsetting” the order after twenty years, with certain exceptions.

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

**PHILIPS ELECTRONICS NORTH AMERICA
CORPORATION**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4062; File No. 0223095
Complaint, October 8, 2002--Decision, October 8, 2002*

This consent order addresses cash rebate offers made by Respondent Philips Electronics North America Corporation – which manufactures, advertises, labels, offers for sale, sells, and distributes computer peripheral equipment, such as CD-rewritable drives and computer monitors – to consumers who purchased computer peripheral products. The order, among other things, prohibits the respondent – with respect to its marketing of any personal computer or personal computer-related product sold to consumers – from misrepresenting the time in which it will mail any cash rebate or any credit towards future purchases. The order also prohibits the respondent from failing to provide any such rebate within the time specified, or if no time is specified, within thirty days, and from violating the Mail or Telephone Order Rule if it offers rebates in the form of merchandise. In addition, the order prohibits the respondent from misrepresenting any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate. The order also requires the respondent to pay out all valid rebates requests that are due or past due as of the date of service of the order, and to send a rebate to any eligible consumer who contacts the respondent or the FTC for a period of 60 days after service of the order.

Participants

For the Commission: *Linda K. Badger, Matthew D. Gold, Erika Wodinsky, and Jeffrey Klurfeld.*

For the Respondent: *Thomas M. Hafner, Phillips Electronics North America.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Philips Electronics North America Corporation, a corporation (“Philips” or “respondent”), has violated the provisions of the