

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

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Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent is a Delaware corporation with its principal office or place of business at 1251 Avenue of the Americas, New York, NY 10020.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed consumer electronic equipment and other electronic products to the public. Through its division, Philips Consumer Electronics North America ("PCENA"), respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed computer peripheral equipment, such as CD-rewritable drives and computer monitors.
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.

FALSE SHIPMENT REPRESENTATIONS

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

A. "\$40 Rebate

Receive a \$40 Rebate with purchase of a CD-Rewritable Drive, model PCRW804.

Offer good May 20 through September 8."

(Exhibit A, advertisement).

B. "Up to \$100 Rebate*

Up to \$100 mail-in rebate on select Philips Monitors.

Offer good July 1 through September 30, 2001."

(Exhibit B, advertisement).

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C. “To receive your rebate:**1. Please fill in the following information:**

Name _____
Street Address _____
City _____
State _____ ZIP _____
Phone (area code first) _____
Product Serial Number _____
Email _____
...

Please note:

...

- Please allow 8 weeks for delivery of your rebate check.

....”

(Exhibit C, rebate coupon).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that respondent will deliver cash rebates to purchasers of Philips computer peripheral products within eight weeks of respondent’s receipt of their valid requests.

6. In truth and in fact, in numerous instances, respondent did not deliver cash rebates to purchasers of Philips computer peripheral products within eight weeks of respondent’s receipt of their valid requests. For its promotions offered through PCENA, from January 2001 to January 2002, over fifty thousand consumers experienced delays of up to six months or more. The rebates at issue ranged from \$20 to \$100 in value. Therefore, the representation set forth in Paragraph 5 was, and is, false or misleading.

Complaint

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

7. In the advertising and sale of computer peripheral products, respondent has offered, expressly or by implication, that consumers would receive cash rebates within eight weeks if they purchased a Philip's computer peripheral product and submitted a rebate form with proof of purchase.

8. After receiving rebate requests in conformance with the offer described in Paragraph 7, respondent extended the time period in which it would deliver the rebates to consumers without consumers agreeing to this extension of time. Respondent failed to deliver the rebates to consumers within the promised time period.

9. Respondent's practice set forth in Paragraphs 7 and 8 was not reasonably avoidable, and caused substantial injury to consumers that was not outweighed by countervailing benefits to consumers or competition. This practice was, and is, an unfair act or 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 eighth day of October, 2002, has issued this complaint against respondent.

By the Commission.

\$40 Rebate

REBATE

PHILIPS

Receive a \$40 Rebate with
purchase of a CD-Rewritable
Drive, model PCRW804.

Offer good May 20 through September 8.

201

8x4x32

CD-Rewritable

Internal
CD-RW

- 1. Plans & compares CD
- 2. Easy to use, easy
- 3. 10 min.
- 4. Create your own CD
- 5. CD-RW CD-R
- 6. Over 100 recordings
- 7. 10 min. 10 min.

Kodak



PHILIPS

Let's make things better

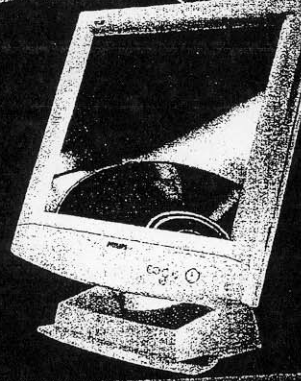
EXHIBIT A

Up to \$100 Rebate*

REBATE

Up to \$100 mail-in rebate
on select Philips Monitors.

Offer good July 1 through September 30, 2001.



Let's make things better



PHILIPS

To receive your rebate:

1. Please fill in the following information:

Name _____
Street Address _____
City _____
State _____ ZIP _____
Phone (area code first) _____
Product Serial Number _____
Email _____

2. Enclose a clear copy of your store sales receipt showing model number, purchase date, and store name.

3. Enclose the original UPC label from product box.

4. Mail this original coupon and the requested information to:

Philips Rebate Offer
Promo. # 01-37104
P.O. Box 9080
Coppell, TX 75019-9080

5. The above requested information must be postmarked by October 6, 2001.

Please note:

- Offer good at participating retailers only.
- Philips Consumer Electronics North America is not responsible for lost, late, mutilated, or misdirected mail.
- Please allow 8 weeks for delivery of your rebate check.
- Omission of any necessary information will result in a return of materials and will require re-submission within the 10/6/01 deadline.
- Offer may not be combined with any other Philips CD Rewritable Drive offers.
- Consumer inquiries, please call 1-866-450-9698 or check rebate status at www.rebateshq.com.
- **TERMS OF THIS OFFER:** Offer runs 5/20/01 through 9/8/01. Offer limited to one per household. Consumer offer only. No requests from groups, clubs or other organizations will be accepted. Void where prohibited, taxed or otherwise restricted by law. Offer good only in USA.



Philips is a registered trademark of Koninklijke Philips Electronics, N.V.



PHILIPS

EXHIBIT C

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, Philips Electronics North America Corporation, is a Delaware corporation with its principal office or place of business at 1251 Avenue of the Americas, New York, NY 10020.

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 Philips Electronics North America Corporation, its successors and assigns and its officers, 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. “Eligible person” shall mean each consumer:
 - a. who has provided to respondent all documentation necessary to qualify that consumer for a rebate under the terms of any rebate offer; and
 - b. whose rebate is due or past due as of the date of service of this order
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. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

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 computer or personal computer-related product sold to consumers, including but not limited to, monitors, speakers, sound cards, CD-RW drives, DVD+RW drives, and multimedia projectors, in or affecting commerce, shall not:

- A. 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;
- B. fail to provide any rebate in the form of cash within the time specified, or, if no time is specified, within thirty (30) days;
- C. 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;
- D. 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;
- E. 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

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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
- F. misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, shall, in accordance with this Part, provide a rebate to each eligible person.

- A. Within ten (10) business days from the date of service of this order, respondent shall mail a rebate to each eligible person whose name appears on any list or database in respondent's possession.
- B. For a period of sixty (60) days from the date of service of this order, respondent shall provide a rebate to each eligible person who has not been provided a rebate pursuant to Part II.A of this order, and who contacts respondent or the Commission in any manner. Each such rebate shall be mailed within ten (10) business days after respondent receives such person's name and contact information.

III.

IT IS FURTHER ORDERED that respondent Philips, and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order,

Decision and 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.

IV.

IT IS FURTHER ORDERED that respondent Philips, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent Philips, 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

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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.

VI.

IT IS FURTHER ORDERED that respondent Philips, and its successors and assigns, 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 they have complied with this order.

VII.

This order will terminate twenty on October 8, 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.

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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 with Philips Electronics North America Corporation (“Philips”). Philips manufactures, advertises, labels, offers for sale, sells, and distributes consumer electronic equipment and other electronic products to the public. Through its division, Philips Consumer Electronics North America, Philips manufactures, advertises, labels, offers for sale, sells, and distributes computer peripheral equipment, such as CD-rewritable drives and computer monitors.

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 Philips made to consumers who purchased computer peripheral products. The complaint alleges that respondent engaged in deceptive and unfair practices relating to these rebate offers. Specifically, the complaint alleges that respondent falsely represented that it would deliver cash rebates to purchasers of its computer peripheral products within eight weeks. For its promotions offered through its division, Philips Consumer Electronics North America, from January 2001 to January 2002, over fifty thousand consumers experienced delays of up to six months or more. The rebates at issue ranged from \$20 to \$100 in value.

The complaint further alleges that, in the advertising and sale of its computer peripheral products, Philips offered to deliver rebates in eight weeks to consumers who purchased a Philips computer peripheral product and submitted a rebate form with proof of purchase. After receiving rebate requests in conformance with this offer, Philips unilaterally extended the time period in

Analysis

which it would deliver the rebates to consumers without consumers agreeing to this extension of time. According to the complaint, this constituted an unfair business practice.

The proposed consent order contains provisions designed to prevent Philips from engaging in similar acts and practices in the future. Part I applies to Philips' marketing of personal computer or personal computer-related product sold to consumers, including but not limited to, monitors, speakers, sound cards, CD-RW drives, DVD+RW drives, and multimedia projectors. With regard to these products, Part I.A. prohibits the respondent from misrepresenting the time in which it will mail any cash rebate or any credit towards future purchases. Parts I.B. and I.C. prohibit Philips from failing to provide any such rebate within the time specified, or if no time is specified, within thirty days.

Part I.D. prohibits the respondent from violating the Federal Trade Commission's Trade Regulation Rule Concerning Mail or Telephone Order Merchandise (the "Mail Order Rule") if it offers rebates in the form of merchandise. Part I.E. addresses rebates in the form of services or other consideration that the Mail Order Rule does not cover. That provision requires the respondent to provide the rebate in the time specified, or within thirty days if no time is specified, unless the respondent offers the purchaser the option of consenting to the delay or canceling the rebate request and promptly receiving reasonable cash compensation instead of the promised rebate. Part I.F. requires that the company not "misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate."

Part II of the proposed order is a redress provision which requires the company to pay out all valid rebates requests that are due or past due as of the date of service of the order. This provision also requires the respondent 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.

Analysis

Parts III through VI of the proposed order are reporting and compliance provisions. Part VII 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
SYSTEM HEALTH PROVIDERS, INC., ET AL.

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

Docket C-4064; File No. 0110196
Complaint, October 24, 2002--Decision, October 24, 2002

This consent order addresses practices used by Respondent Genesis Physicians Group, Inc. (“GPG”) – comprised of approximately 1,250 physicians in the eastern part of the Dallas-Fort Worth metropolitan area (“Dallas area”) – and Respondent System Health Providers, Inc., a management services organization whose voting stock is wholly owned by GPG. The order, among other things, prohibits the respondents from entering into or facilitating agreements among providers: (1) to negotiate on behalf of any provider (including both physicians and non-physician providers of ancillary medical services) with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term upon which any providers deal, or are willing to deal, with any payor; and (4) not to deal individually with any payor or through any arrangement other than SHP or GPG. The order also prohibits the respondents from exchanging or facilitating the transfer of information among providers concerning any provider’s willingness to deal with a payor, or the terms or conditions, including price terms, on which the provider is willing to deal. In addition, the order prohibits the respondents from attempting to engage in – or encouraging, pressuring, or attempting to induce any person to engage in – any action prohibited by the order. The order also requires Respondent SHP to distribute the complaint and order to its members, payors with which it previously contracted, and specified others, and to terminate, without penalty, payor contracts that it had entered into during the collusive period, at any such payor’s request. In addition, the order contains a proviso to preserve payor contract provisions defining post-termination obligations relating to continuity of care during a previously begun course of treatment.

Participants

For the Commission: *Michael Joel Bloom, Dara J. Diomande, Susan M. Gelles, Robert C. Cancellaro, Barbara Anthony, Joseph Eckhaus, Roberta S. Baruch, D. Bruce Hoffman, and Timothy A. Dayek.*

For the Respondents: *Jerry Beane and Kay Lynn Brumbaugh, Strasburger & Price, LLP.*