

Complaint

IN THE MATTER OF

**PRITI SHARMA AND RAJEEV SHARMA,
INDIVIDUALLY AND AS OFFICERS OF Q.P.S., INC.**

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

*Docket C-4138; File No. 0223278
Complaint, June 1, 2005--Decision, June 1, 2005*

This consent order, among other things, prohibits the respondents -- in connection with the manufacturing or marketing of any product or service sold to consumers -- from making any unsubstantiated representation about the time in which any rebate will be mailed or otherwise provided to qualifying consumers; from failing to provide any such rebate within the time specified (or within 30 days, if no time is specified); and from misrepresenting any material terms of any such rebate program.

Participants

For the Commission: *Kerry O'Brien, Linda K. Badger, Matthew D. Gold, Jeffrey A. Klurfeld, Gerard R. Butters, and Paul A. Pautler.*

For the Respondents: *Carlton Varner, Sheppard Mullin Richter & Hampton.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Priti Sharma and Rajeev Sharma, individually and as officers of Q.P.S., Inc. ("respondents"), have 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 Priti Sharma is an officer of Q.P.S., Inc. ("QPS"). Individually or in concert with others, she has formulated, directed, or controlled the policies, acts, or practices of QPS, including the acts or practices alleged in this complaint. Her

Complaint

principal office or place of business is at 8015 E. Crystal Drive, Anaheim, CA 92807.

2. Respondent Rajeev Sharma is an officer of QPS. Individually or in concert with others, he has formulated, directed, or controlled the policies, acts, or practices of QPS, including the acts or practices alleged in this complaint. His principal office or place of business is at 8015 E. Crystal Drive, Anaheim, CA 92807.

3. QPS is a California corporation with its principal office or place of business at 8015 E. Crystal Drive, Anaheim, CA 92807. QPS advertised, labeled, offered for sale, sold, and distributed computer peripheral products to the public, including CD-R, CD-RW, and DVD storage products, under the brand name *Que!* On August 12, 2002, QPS filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the Central District of California, Case No. SA 02-16187JB.

4. The acts and practices of respondents 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. Respondents have disseminated or have caused to be disseminated advertisements and rebate forms for QPS-funded mail-in rebates, including but not necessarily limited to the attached Exhibits A and B. This advertisement and rebate form contain the following statements:

- A. **“SAVE! \$50**
32x10x40 FireWire
CD-RW Drive
....
\$129⁹⁹ After Savings & Rebate
179.99 - 20 Instant Savings

Complaint

-30 Mfr. Mail-In Rebate”

(Exhibit A, an excerpt from a typical freestanding newspaper insert that advertised a QPS-funded mail-in rebate (Offer # 8372). Respondents disseminated or caused to be disseminated similar advertisements from September 2001 to July 2002).

B. “\$30 Mail-in Rebate

QPS

32x10x40 FireWire CD-RW Drive

.....

Rebate checks will be mailed in 6-8 weeks. If you have not received your check within 10 weeks, visit

www.wheresmyrebate.com or call 800-390-2344.”

[The “COMPUSA” logo is printed on the rebate form.]

(Exhibit B, a typical QPS rebate form (Offer # 8372).

Respondents disseminated or caused to be disseminated similar forms to consumers from September 2001 to July 2002).

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

- A. Rebate checks will be mailed to purchasers of advertised QPS products within six to eight weeks of receipt of their valid requests; and
- B. Rebate checks will be mailed to purchasers of advertised QPS products within a reasonable period of time of receipt of their valid requests.

7. In truth and in fact, in numerous instances, purchasers of advertised QPS products were not mailed rebate checks within either six to eight weeks or within a reasonable period of time of receipt of their valid requests. From September 2001 until

Complaint

December 2001, many consumers experienced delays ranging from one to six months in receiving their promised rebates, which ranged from \$15 to \$100 in value. From January 2002 through July 2002, many consumers experienced similar delays, and thousands of consumers never received their promised rebates from QPS. 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 computer peripheral products, respondents have offered, expressly or by implication, that consumers would receive rebate checks within six to eight weeks if they purchased the advertised computer peripheral product and submitted a valid rebate request.

9. After receiving rebate requests in conformance with the offer described in Paragraph 8, respondents extended the time period in which they would deliver the rebates to consumers without consumers agreeing to this extension of time. Consumers often learned about this unilateral extension of time when they inquired about the status of a rebate request. Respondents then failed to deliver the rebates to consumers within the originally-promised time period.

10. Respondents' practice set forth in Paragraphs 8 and 9 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.

11. The acts and practices of respondents 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.

Complaint

THEREFORE, the Federal Trade Commission this first day of June, 2005, has issued this complaint against respondents.

Complaint

SAVE!

\$50

32X10X40 FireWire CD-RW Drive*

Up to 40X max.

\$129.99

After Savings & Rebate

179.99 - 20 Instant Savings

30 Min. Mail-In Rebate

1-800-444-4444

Complaint

**\$30
Mail-in
Rebate**

(CompUSA Sku #289522)

1. Purchase 32x10x40 FireWire CD-RW Drive at CompUSA between 7/13/02 and 7/20/02. Request must be postmarked by 8/3/02.
2. Fill out this form completely. Incomplete forms will not be accepted.
3. Mail this form with a copy of your sales receipt and original UPC code from product package to:

QPS Offer #8372
P. O. Box 821
New Rochelle, NY 10802-0821

COMPUSA

0228-087

See Reverse Side for Details

Sku #289522

QPS Offer #8372

THIS REQUEST MUST BE POSTMARKED BY 8/3/02

Name:

Address:

City: State: ZIP:

Telephone: - -

E-mail:

Notification of Rebate Status

Required Signature _____ Date _____
I have complied with the requirements of this offer

TERMS AND CONDITIONS-Offer valid on purchase of specified product(s) only. Submit this rebate form completely filled out with a copy of the sales receipt and the original UPC label from package. Incomplete forms will be denied. Your request must be postmarked prior to deadline. Manufacturer is not responsible for lost or misdirected mail. Limit ONE rebate per person, receipt, household, family or address. Rebate value will not exceed purchase price. Requests from PO Boxes not accepted. Requests with invalid or undeliverable mailing address will be denied. Offer limited to end-users only. Your rebate rights cannot be transferred, and this offer is void where taxed, restricted or prohibited by law. This offer valid in US only. Keep copies of all materials submitted: originals become Manufacturer's property and will not be returned. Warning: Fraudulent submission could result in federal prosecution under mail fraud statutes (Title 18, USC Sections 1341 & 1342). This offer is no longer valid if not fully redeemed within 6 months from last valid purchase date. Rebate checks will be mailed in 6-8 weeks. If you have not received your check within 10 weeks, visit www.wheresmyrebate.com or call 800-390-2344.

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 received, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent, Priti Sharma, is an officer of Q.P.S., Inc. ("QPS"). Her principal office or place of business is 8015 E. Crystal Drive, Anaheim, CA 92807.

2. Respondent, Rajeev Sharma, is an officer of Q.P.S., Inc. (“QPS”). His principal office or place of business is 8015 E. Crystal Drive, Anaheim, CA 92807.

3. 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, “respondents” shall mean Priti Sharma and Rajeev Sharma, individually and as officers of QPS; and each of the above’s agents, representatives, and employees.
2. “Rebate” shall mean check, cash, credit towards future purchases, or any other consideration offered to consumers who purchase products or services, and which is to be provided subsequent to the purchase.
3. “Receiving a properly completed request” shall mean the time at which the respondents receive from the rebate applicant all the documentation, information and other materials required by the express terms of the rebate offer, and in compliance with such terms.
4. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising,

Decision and Order

promotion, offering for sale, sale, or distribution of any product or service sold to consumers, in or affecting commerce, shall not:

- A. make any representation, in any manner, expressly or by implication, about the time in which any rebate will be mailed, or otherwise provided to qualifying consumers unless, at the time the representation is made, they possess and rely upon competent and reliable evidence that substantiates the representation;
- B. fail to provide any rebate within the time specified or, if no time is specified, within thirty (30) days of receiving a properly completed request for such rebate; or
- C. 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 respondents Priti Sharma and Rajeev Sharma 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. A specimen copy of all rebate forms containing the representation;
- C. All materials that were relied upon in disseminating the representation; and

- D. 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.

III.

IT IS FURTHER ORDERED that respondents Priti Sharma and Rajeev Sharma 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. Respondents 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.

IV.

IT IS FURTHER ORDERED that respondents Priti Sharma and Rajeev Sharma, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his or her current business or employment, or of his or her 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 or her 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, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Decision and Order

V.

IT IS FURTHER ORDERED that respondents Priti Sharma and Rajeev Sharma 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.

VI.

This order will terminate on June 1, 2025, 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 of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order with Priti Sharma and Rajeev Sharma (“proposed respondents”). Proposed respondents were officers of Q.P.S., Inc. (“QPS”), a company that marketed computer peripheral products to the public, including CD-R, CD-RW, and DVD storage products, under the brand name *Que!* In 2002, QPS filed for bankruptcy.

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.

The complaint alleges that proposed respondents engaged in deceptive and unfair practices relating to mail-in rebate offers that QPS advertised to consumers. Proposed respondents are named individually in this complaint because they formulated, directed, or controlled the policies, acts, or practices of QPS, including the acts or practices alleged in the complaint. Specifically, the complaint alleges that proposed respondents falsely represented that QPS-funded rebate checks would be mailed to purchasers of advertised QPS products within six to eight weeks, or within a reasonable period of time. From September 2001 until December 2001, many consumers experienced delays ranging from one to six months in receiving their promised rebates, which ranged from \$15 to \$100 in value. From January 2002 through July 2002, many consumers experienced similar delays, and thousands of consumers never received their promised rebates from QPS. Despite these significant problems, proposed respondents continually advertised these QPS rebates until shortly before QPS filed for bankruptcy in August 2002.

Analysis

Finally, the complaint alleges that, in the advertising and sale of computer peripheral products, proposed respondents offered to deliver rebates within six to eight weeks if they purchased the advertised computer peripheral products and submitted valid rebate requests for proposed respondents-funded rebate offers. After receiving rebate requests in conformance with these offers, proposed respondents unilaterally extended the time period in 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 order contains provisions designed to prevent proposed respondents from engaging in similar acts and practices in the future. Specifically, Part I.A. prohibits the proposed respondents from representing the time in which they will mail any rebate, unless they possess competent and reliable evidence substantiating the claim. Part I.B. prohibits proposed respondents from failing to provide any rebate within the time specified, or if no time is specified, within thirty days. Part I.C. requires that proposed respondents 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.”

Parts II through V of the proposed order are reporting and compliance provisions. Part VI 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

COMPUSA INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4137; File No. 0223278**Complaint, June 1, 2005--Decision, June 1, 2005*

This consent order, among other things, prohibits the respondent -- in connection with the manufacturing or marketing of any product or service sold to consumers -- from making any unsubstantiated representation about the time in which any CompUSA Rebate will be mailed or otherwise provided to qualifying consumers; from failing to provide any such rebate within the time specified (or within 30 days, if no time is specified); and from misrepresenting any material terms of any such rebate program. The order also prohibits the respondent -- in connection with the manufacturing or marketing of any product or service sold to consumers -- from making any representation about the availability of any manufacturer or other third party rebate without information indicating that the third party will pay the rebates offered in a timely manner. In addition, the order requires the respondent to pay all valid rebate requests to consumers who purchased QPS products at CompUSA.

Participants

For the Commission: *Kerry O'Brien, Linda K. Badger, Matthew D. Gold, Jeffrey A. Klurfeld, Gerard R. Butters, and Paul A. Pautler.*

For the Respondent: *Mark Walker, CompUSA, Inc., and Lee N. Abrams, Mayer, Brown, Rowe and Maw.*

COMPLAINT

The Federal Trade Commission, having reason to believe that CompUSA 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: