

Complaint

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

*Docket C-4192; File No. 062 3066
Complaint, June 4, 2007 — Decision, June 4, 2007*

This consent order addresses allegedly deceptive and unfair practices regarding respondent InPhonic's advertised mail-in rebates on wireless telephone packages marketed online. The order prohibits InPhonic from making a claim about the amount of any rebate, unless it discloses, clearly and conspicuously, on its website and on any rebate coupon or form, all terms, conditions, or other limitations of the rebate offer. In addition, the order prohibits InPhonic from misrepresenting what documentation consumers must submit and any material terms of any rebate program. It prohibits InPhonic from representing that consumers will have the opportunity to resubmit deficient rebate requests, unless it gives consumers a reasonable period of time in which to resubmit such requests and notifies them precisely how to correct any deficiencies. The order requires InPhonic to provide to consumers all required rebate documentation. It prohibits InPhonic from making any representation about the time in which any rebate will be provided, unless it has a reasonable basis for the representation at the time it is made, and it prohibits InPhonic from failing to provide any rebate within the time specified or, if no time is specified, within 30 days. The order also requires InPhonic to send rebates to eligible purchasers, including consumers whose rebate requests were previously denied on the basis of certain reasons. In addition, the order includes reporting and compliance provisions.

Participants

For the *Commission*: *Matthew D. Gold, Linda K. Badger, and Kerry O'Brien.*

For the *Respondent*: *Dana Frix, Chadbourne & Parke LLP; and F. Martin Dajani, DLA Piper Rudnick Gray Cary.*

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The Federal Trade Commission, having reason to believe that InPhonic, Inc., a corporation (“InPhonic” or “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 is a Delaware corporation with its principal office or place of business at 1010 Wisconsin Avenue, NW, Suite 600, Washington, DC 20007.
2. Respondent has advertised, offered for sale, sold, and distributed products and services to the public, primarily wireless telephone packages. Respondent markets these wireless telephone packages online through Web sites such as www.wirefly.com, www.a1wireless.com, and numerous others. Each wireless telephone package includes a name-brand wireless device and a wireless service contract with a national or regional wireless carrier.
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.

Respondent’s Rebate Terms and Conditions

4. In marketing its wireless telephone packages, respondent has advertised mail-in rebates, which, in many cases, have equaled the purchase price of the wireless device being purchased. (*See, e.g.*, Exhibit A). These rebates have been subject to numerous terms and conditions.
5. Respondent has offered two basic types of rebate programs, each of which has required that the consumer submit a rebate request within a specified time period and provide both proof-of-purchase documentation and proof that the consumer has

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maintained uninterrupted wireless service for a designated period of time.

- A. Respondent's "customer loyalty" rebate has required the submission of a rebate form that respondent was to send to the consumer with the wireless device, a copy of the sales receipt, a copy of the UPC code from the wireless device's box, and a copy of the wireless service bill demonstrating that the consumer has maintained uninterrupted service for a designated period of time (typically 150 days after phone activation). Further, to be valid, the consumer's rebate request, with all required documentation, has had to be postmarked within a specified window of time, typically 180-210 days after phone activation. (*See, e.g., Exhibit B*).
 - B. Respondent's "customer appreciation rebate" has required the submission of a rebate form that respondent was to send to the consumer with the wireless device, a copy of the sales receipt, a copy of the UPC code from the wireless device's box, a copy of the "Guide to Wireless Service" that respondent was to send to the consumer with the wireless device, and copies of several wireless service bills. Further, to be valid, this rebate request, with all supporting documentation, has had to be postmarked within 120 days after phone activation. (*See, e.g., Exhibit C*).
6. Respondent typically advertises available rebates on its Web sites. (*See, e.g., Exhibit A*). Each listed rebate has a hyperlink. A consumer who clicks the hyperlink is taken to a page which describes some of the extensive terms and conditions of the advertised rebate. Consumers can purchase the package without viewing these terms and conditions. In addition, there is nothing on the link itself to indicate the nature or significance of the terms and conditions. As a result, numerous consumers were not aware of several unusual and restrictive terms and conditions making the rebate offer less attractive. For example, at the time of purchase, numerous consumers were not aware that: (a) they would not be

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able to submit a request for the rebate until as much as six months after purchase; (b) they would not receive the rebate until as much as nine or ten months after purchase; and (c) even if they continuously maintained their wireless service for the required period of time, they would be disqualified from receiving a rebate if they changed their wireless phone numbers after purchase.

7. Respondent has disseminated or has caused to be disseminated rebate forms for its “customer appreciation rebate,” including but not necessarily limited to the attached Exhibit C. These rebate forms have contained the following statements:

“\$150 Mail-In Rebate

...

3. Include the following information with your rebate form:

...

\$ Copy of your 1st, 2nd, and 3rd wireless bills showing customer name, mobile number, and bill/invoice date for this account showing all balances paid in full (bills must be dated within 120 days after purchase date).

....”

(Exhibit C, InPhonic rebate form (Offer BAK).)

8. Numerous consumers seeking to redeem respondent’s “customer appreciation rebate” waited for a fourth wireless bill to show that their third wireless bill had been “paid in full.” As a result, these consumers were unable to submit their rebate requests to respondent within the 120-day time period specified in the offer. Respondent rejected such rebate requests as untimely.

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Respondent's Rebate Fulfillment Practices

9. Respondent uses third-party companies ("fulfilment houses") to receive and process rebate requests from consumers. Respondent has directed its fulfilment houses to apply strict criteria when determining the validity of a specific rebate request. For example, respondent has rejected requests in which rebate forms were not filled out completely, even if the missing information was provided elsewhere in the documentation provided by the consumer (*e.g.*, a wireless telephone number that appeared on the enclosed wireless bill) or was not necessary to determine whether those requesting the rebates were bona fide purchasers of respondent's wireless packages who maintained uninterrupted wireless service for the required period of time (*e.g.*, an email address). Only about one-half of the consumers who have applied for rebates have received one, even though the vast majority of such consumers have been bona fide purchasers of respondent's wireless packages and have maintained uninterrupted wireless service for the required period of time.

10. In numerous cases, respondent has rejected rebate requests because the requests lacked documentation that respondent failed to supply to consumers. For example, many consumers did not receive the required rebate redemption form when they received their wireless device, did not receive a box containing the required UPC code, and/or did not receive a required "Guide to Wireless Service" and, despite repeated attempts to contact respondent, were unable to obtain one or more of these items in time to send a valid rebate request.

11. In instances where a consumer's rebate request has been rejected because of a curable deficiency, respondent has directed the fulfilment house to notify the consumer and suggest that the consumer re-submit the request during the required time frame and/or with the required documentation. Many of respondent's rebate forms also have included the following statement:

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“IF YOU ARE REQUIRED TO RESUBMIT MISSING, INCORRECT, OR ILLEGIBLE INFORMATION, YOUR CLAIM STATUS WILL BE UPDATED AT [RESPONDENT’S REBATE STATUS] WEBSITE.” (*See, e.g.*, Exhibit B).

12. In spite of these practices, in numerous cases, respondent has denied consumers a reasonable opportunity to resubmit deficient rebate requests. For example, many consumers have not been able to cure a rebate request because the fulfillment house has notified them about the deficiency too late. Specifically, consumers who had submitted requests in a timely manner, but whose request contained missing, illegible or incorrect information, have received notice of the deficiency after the last day on which a request would be accepted under the terms of the original rebate offer. In such cases, respondent has denied as untimely attempts by the consumer to resubmit the rebate request.

13. All of respondent’s rebate offers have represented that consumers would receive their rebate checks within twelve weeks of respondent’s receipt of the rebate request. In numerous cases, consumers experienced significant delays in receiving their promised rebates.

**DECEPTIVE FAILURE TO DISCLOSE MATERIAL
TERMS AND CONDITIONS OF REBATE OFFERS**

14. Through the means described in Paragraphs 4 through 6, respondent has represented, expressly or by implication, that substantial mail-in rebates were available to purchasers of respondent’s wireless telephone packages. Respondent has failed to disclose or has failed to disclose adequately that:

- A. consumers would not be able to submit a request until at least three or six months after purchase;

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- B. consumers would be required to submit wireless bills establishing three or six months of continuous wireless service in good standing;
- C. consumers would not receive their rebate check until approximately six or nine months after purchase;
- D. an email address would be required to be eligible for the rebate;
- E. consumers who changed their wireless phone numbers after purchase would be disqualified from receiving a rebate; and
- F. any rebate submission that did not strictly comply with all rebate terms and conditions or that was deemed in any way illegible could be rejected with little or no opportunity to resubmit.

These facts would be material to consumers in their purchase or use of the product. The failure to disclose or to adequately disclose these facts, in light of the representation made, was, and is, a deceptive practice.

**MISLEADING REBATE TERMS AND CONDITIONS —
DECEPTIVE PRACTICES**

15. Through the means described in Paragraph , respondent has represented, expressly or by implication, that consumers seeking to redeem respondent's "customer appreciation rebate" needed to establish that their first three months of wireless service had been paid in full by submitting four wireless bills.

16. In truth and in fact, consumers seeking to redeem respondent's "customer appreciation rebate" did not need to establish that their first three months of wireless service had been paid in full by submitting four wireless bills. Numerous consumers who waited to submit their fourth wireless bill in order to establish that their

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first three months of wireless service had been paid in full were unable to submit the rebate request within the 120-day time period specified in the offer, and respondent rejected such rebate requests as untimely. Therefore, the representation set forth in Paragraph 15 was, and is, false or misleading.

17. Through the means described in Paragraph 11, respondent has represented, expressly or by implication, that consumers whose rebate requests contained missing, incorrect or illegible information would be given a reasonable opportunity to resubmit their request.

18. In truth and in fact, in numerous instances, consumers whose rebate requests contained missing, incorrect or illegible information were not given a reasonable opportunity to resubmit their request. Therefore, the representation set forth in Paragraph 17 was, and is, false or misleading.

**UNFAIR ACT OR PRACTICE PREVENTING
CONSUMERS FROM OBTAINING REBATES**

19. As described in Paragraph 10, respondent has failed to provide rebates to numerous consumers who were bona fide purchasers of respondent's wireless telephone packages, maintained their wireless account in good standing for the appropriate period of time, and made all reasonable efforts to submit rebate applications that complied with the required terms and conditions. In numerous cases, respondent rejected rebate requests, or consumers were prevented from submitting valid requests, because respondent failed to supply to consumers with one or more pieces of required documentation and consumers, despite their best efforts, were unable to obtain such documentation from respondent. Respondent's failure to provide rebates to such consumers has caused or is likely to cause substantial injury to consumers 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.

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LATE DELIVERY — UNFAIR PRACTICE

20. In connection with its rebate programs, respondent promised to provide consumers with rebate checks within 12 weeks of rebate submission, if they purchased a wireless phone and service plan, and submitted a valid rebate request with supporting documentation. After receiving rebate requests in conformance with these terms, respondent failed to deliver the rebates to consumers within the promised time period. Respondent extended the time period in which it would deliver the rebates to consumers without consumers agreeing to this extension of time. Respondent's failure to deliver the rebate checks to consumers within the originally-promised time period has caused or is likely to cause substantial injury to consumers 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.

21. 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 fourth day of June, 2007, has issued this complaint against respondent.

By the Commission.

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Complaint Exhibits

Welcome to our Wireless World


FREE PHONES! PICK YOUR CARRIER!
4 DAY SALE ENDS TUESDAY!

 Phone Orders
 1.888.WIREFLY
 (1.888.947.3397)

[View Cart \(0\)](#) | [About Us](#) | [Check Your Order Status](#) | [Contact Us](#)
Verizon Wireless Online Offer for Oakland, CA 94618 [not your zip code?](#)

Order by Phone

Carrier Selected	Phone Selected	Plan Selected			
Select Another Carrier More Verizon Wireless Options • More Phones • Individual Plans • Shared Plans • National Coverage Map • Satellite TV Motorola Store FedEx.	SAMSUNG Samsung A950 for Verizon Wireless FREE after rebate with a new Verizon Wireless account • Image Gallery • Phone Details • Choose this Phone This item is now from Verizon Wireless with full U.S. Warranty Verizon Wireless Value Match Guarantee <table border="1"> <tr> <td>Samsung A950</td> <td>\$299.99</td> <td>\$199.99</td> </tr> </table> with a new Verizon Wireless account 2-Day Delivery via FedEx FREE Your Cost Today \$139.99 After Rebates, This Item is FREE! \$50.00 Customer Loyalty Mail-in Rebate \$50.00 Wireless Device Mail-in Rebate	Samsung A950	\$299.99	\$199.99	450 America's Choice 450 Minutes FREE 450 Minutes Roaming \$39.99 per month UNLIMITED In-Network Minutes • Plan Details • Plan Coverage Map • Terms and Conditions • More Verizon Wireless Plans Save Even More! Get 2 Phones with a Shared Plan Select this Phone and Plan
Samsung A950	\$299.99	\$199.99			

Order by Phone



This Web site has chosen one or more VeriSign SSL Certificate or online payment solutions to improve the security of e-commerce and other confidential communication

EXHIBIT A

Complaint

Welcome to our Wireless World

Orders for products and services are fulfilled by InPhonic, Inc., an authorized agent for Verizon Wireless.
[Please click here for full disclaimer details.](#)

[Shipping](#) | [Site Security](#) | [Privacy Policy](#)

Copyright ©2008.
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\$150 Customer Loyalty Rebate

First Name		Last Name	
Address			
City		State	Zip
E-mail Address		Daytime Phone Number (xxx-xxx-xxxx)	
Activation Date (mm/dd/yyyy)		Order Number (found at top of sales receipt)	
Your Wireless Service Provider (circle one) Alltel Cellular One Cingular Verizon Nextel Sprint T-Mobile US Cellular		Mobile Number (xxx-xxx-xxxx)	

How to Submit Your Rebate Claim

1. Fill out all information above. All fields are required. Please print clearly. Incomplete or illegible entries will not be processed.

2. Read, sign, and date this form.

3. Include the following information with your rebate form:
- Copy of the dated sales receipt included with your shipment.
 - Copy of the 12 digit UPC barcode from the product packaging.
 - Your wireless service bill for this account dated between 150-210 days after the activation date shown on your sales receipt. Copies or printouts of online bills will be accepted but **MUST SHOW THE FOLLOWING INFORMATION:**
 - Date of invoice (bill or statement date)
 - Customer name (must match the name on your sales receipt and rebate form)
 - Mobile phone number at time of rebate submission
 - Wireless service account number at time of rebate submission
 - Payment section showing any previous balance paid in full

4. Submit completed rebate form and all documents noted above to the following address:

Department 27930
Customer Loyalty Rebate
PO Box 62900
Phoenix, AZ 85072

5. Submit only one rebate claim per envelope. **REBATE FORMS MUST BE POSTMARKED NO EARLIER THAN 180 DAYS AFTER THE DATE OF ACTIVATION DATE SHOWN ON YOUR SALES RECEIPT AND NO LATER THAN 210 DAYS AFTER THIS ACTIVATION DATE.** Submissions not correctly postmarked within this timeframe will not qualify Early submissions will not be accepted. The rebate processing is not responsible for late, lost, mutilated, misdirected, or postage due requests. Keep copies of all documents for your records.

This form will serve as your Rebate Authorization. You will receive a check for the amount of \$150.00 within 10-12 weeks of our receipt of your rebate request. Checks not cashed within 90 days of issuance will be considered void and not eligible for re-issue. Rebate claims will not be honored for equipment purchases which are not paid-in-full within 90 days of order completion.

To check your rebate status, visit www.cellphonerebates.com or call (866) 800-4303. Allow 10-14 business days after mailing your claim for your claim to register on this site. IF YOU ARE REQUIRED TO RESUBMIT MISSING, INCORRECT, OR ILLEGIBLE INFORMATION, YOUR CLAIM STATUS WILL BE UPDATED AT THIS WEB SITE WITH THE APPROPRIATE INSTRUCTIONS. It is your responsibility to check status regularly and provide additional information if required. Early submissions will not be accepted and you will be required to resubmit the entire claim with required documentation during the original postmark deadline.

For more information, visit www.cellphonerebates.com or call (866) 800-4303. Allow 10-14 business days after mailing your claim for your claim to register on this site. IF YOU ARE REQUIRED TO RESUBMIT MISSING, INCORRECT, OR ILLEGIBLE INFORMATION, YOUR CLAIM STATUS WILL BE UPDATED AT THIS WEB SITE WITH THE APPROPRIATE INSTRUCTIONS. It is your responsibility to check status regularly and provide additional information if required. Early submissions will not be accepted and you will be required to resubmit the entire claim with required documentation during the original postmark deadline.

Signature		Date	
Rebate Details: Kyocera K01 / KX2 (Camera Phone)		\$150.00 Customer Loyalty Mail-In Rebate	
0641202379	56025232	565	22405

2INP:029

EXHIBIT B

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\$150 Mail-In RebateCustomer Appreciation Rebate
Two Year Agreement Required

First Name		Last Name	
Address			
City		State	Zip
Email Address			
Daytime Phone Number (xxx-xxx-xxxx)		Purchase Date (mm/dd/yyyy)	Wireless Provider
Customer Order Number (found at top of sales receipt)		Mobile Number (xxx-xxx-xxxx)	

Instructions for Submitting Your Rebate Claim

- Fill out all information above. All fields are required! Please print clearly. Entries received without complete or legible information will not be processed. Keep copies of all documents for your records.
- Read, sign, and date this form.
- Include the following information with your rebate form:
 - Copy of the dated sales receipt included with your shipment.
 - Copy of the Guide to Wireless Service included with your shipment that provides details of service plan activated with your phone.
 - Copy of the 12 digit UPC bar code from the product packaging.
 - Copy of your 1st, 2nd, and 3rd wireless bills showing customer name, mobile number, and bill/invoice date for this account showing all balances paid in full (bills must be dated within 120 days after purchase date).
- Submit completed rebate form and above referenced information to the following address. Limit one rebate claim form per envelope. All documentation referenced above must accompany each submitted claim. Entries must be postmarked within 120 days from purchase date.

Rebate Processing Center
Department BAK
PO Box 100363
White Bear Lake, MN 55110

- To check status of rebate, log on to <http://www.rebate-zone.com/inphonic>.

***** Incomplete or illegible entries will not be processed *****

In addition to this rebate, an equipment purchase discount of \$150 has been provided to you in exchange for activating and maintaining a new, non-substitute wireless service mobile number on any commercially published wireless service rate plan for a minimum of 181 consecutive days. Should this number disconnect (permanently or temporarily, except based on the fault of the Wireless Service carrier) from the chosen Wireless carrier, or if the customer's wireless service rate plan is changed to one of a lower service rate plan, within the same time period (181 consecutive days), both this discount and rebate will be null and void and the customer must reimburse this Authorized Carrier Representative \$150. The customer herein provides authorization for the \$150 to be charged to the customer's credit card without need for further approval; the \$150 will only be charged if the monthly service rate is changed to one of a lower monthly service rate or if the wireless phone bill is not paid for 181 consecutive days.

I authorize that this \$150 can be charged to my credit card and in the event that any legal action is necessary to collect the amount due I agree to pay any legal fees, collection fees, and court costs.

This rebate will be null and void if all balances owed InPhonic Inc are not paid in full within 30 days of purchase date.

This form will serve as your Rebate Authorization. You will receive a check for the amount of \$150 within 10-12 weeks of our receipt of your rebate request. Checks not cashed within 90 days of issuance will be considered void and not eligible for re-issues.

Signature

Date

INV# 800194

INPC 00086

Dept: BAK

2INP:038

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, 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 InPhonic, Inc. is a Delaware corporation with its principal office or place of business at 1010 Wisconsin Avenue, NW, Suite 600, Washington, DC 20007.

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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 InPhonic, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. “Rebate” shall mean a 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, to consumers who submit a request for redemption after satisfying the terms and conditions of the offer.
3. “Clearly and prominently” 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 video portions of the advertisement. *Provided, however,* that in any advertisement presented solely through video 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 video 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. In addition to the foregoing, in interactive

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media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

- 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. In multipage documents, the disclosure shall appear on the cover or first page.
- 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.

4. “Required rebate documentation” shall mean rebate coupons or forms, receipts, UPC codes, or other materials intended to be supplied by respondent to consumers and which consumers must include as part of a properly completed rebate request.

5. “Eligible purchaser” shall mean each consumer: 1) who was a bona fide purchaser of an InPhonic product for which a rebate was being offered from October 1, 2004 to the present; 2) who submitted a request for such a rebate prior to twelve (12) weeks before the date of service of this order; 3) whose InPhonic rebate has not been paid as of the date of service of this order; and

- a. whose request was denied solely on the basis of one or more of the following reasons:

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1. the consumer changed his/her wireless phone number;
 2. the signature on the rebate form was illegible;
 3. the respondent failed to provide the consumer with required information or documents;
 4. the email address was missing from the rebate form; or
 5. the request was late due to the consumer's submission of a fourth wireless bill; or
- b. whose request was denied for any curable deficiency but the consumer was not given at least thirty (30) days to resubmit the request.
6. "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service sold to consumers, in or affecting commerce, shall not make any representation in any advertisement about the amount of any rebate available to purchasers of such product or service, or about the after-rebate cost of such product or service, unless respondent:

- A. discloses, clearly and prominently:
1. any time period that consumers must wait before submitting a rebate request;
 2. that consumers who change their wireless phone numbers after purchase are disqualified from receiving a rebate, if such is the case;

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3. that any rebate submission that does not strictly comply with all rebate terms and conditions, or that is deemed in any way illegible, may be rejected with little or no opportunity to resubmit, if such is the case;
 4. any requirement for submitting bills, records, or any other documentation, with a rebate request;
 5. when consumers can expect to receive their rebates; and
 6. that an email address is required to be eligible for the rebate, if such is the case; and
- B. discloses on the rebate coupon or form, clearly and prominently, all terms, conditions, or other limitations of the rebate offer.

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 product or service sold to consumers, in or affecting commerce, shall not:

- A. misrepresent, in any manner, expressly or by implication, what bills, records, or other documentation that consumers must submit with any rebate request; or
- B. 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.

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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 product or service sold to consumers, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that consumers will have the opportunity to resubmit deficient rebate requests, unless respondent provides such consumers a reasonable period of time in which to resubmit such rebate requests and notifies them precisely how to correct any deficiencies.

IV.

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 product or service sold to consumers, in or affecting commerce, shall not:

- A. fail to provide, or to make reasonably available to consumers, all required rebate documentation;
- B. make any representation, in any manner, expressly or by implication, about the time in which any rebate will be mailed, or otherwise provided to purchasers unless, at the time the representation is made, respondent has a reasonable basis for such representation; or
- C. 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.

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V.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall, in accordance with this Part, provide a rebate to each eligible purchaser.

- A. Within ten (10) business days from the date of service of this order, respondent shall compile (1) a mailing list or database containing the name and last known mailing address of each eligible purchaser, and (2) the rebate amount(s) each such person is owed. In addition, respondent shall retain a National Change of Address System (“NCOA”) licensee to update this list by processing the list through the NCOA database.
- B. Within thirty (30) business days from the date of service of this order, respondent shall mail via first-class mail, postage prepaid, a check for the rebate amount(s) owed to each eligible purchaser whose name appears on the list or database required by sub-part A of this Part. Respondent shall also send a notice in the form set forth in Appendix A to this order to each such eligible purchaser. No materials, other than the rebate check and the notice, shall be transmitted therewith.
- C. The envelope containing the items set forth in subpart — of this Part shall substantially be in the form set forth in Appendix — to this order. For each mailing returned by the U.S. Postal Service as undeliverable for which respondent thereafter obtains a corrected address, respondent shall, within fifteen (15) business days after receiving the corrected address, send the items set forth in subpart — of this Part to the corrected address.
- D. For a period of seventy-five (75) days from the date of service of this order, respondent shall mail via first-class mail, postage prepaid, the rebate amount(s) owed to each

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eligible purchaser who has not been provided a rebate pursuant to sub-part — of this Part, and who contacts the respondent or the Commission in any manner. Each such rebate shall be mailed within ten (10) business days after the respondent receives such person's name and contact information.

- E. The rebate checks distributed under this Part shall contain on the back of the checks the following general release language:

“Release: By my endorsement of this check I affirm that I am entitled to one or more rebates that I previously requested from InPhonic, Inc., and I hereby relinquish and forever discharge InPhonic, Inc., its subsidiaries, assigns, officers, directors, employees, and agents, for any and all claims that I have against them with regard to the rebate(s) for which I am being paid.”

This language shall be in a prominent type thickness and in a type size no smaller than twelve (12) point type. The language shall be of a color or shade that readily contrasts with the background of the check.

- F. Within one hundred fifty (150) days from the date of service of this order, respondent shall furnish to Commission staff the following:
1. The mailing list or database required by sub-part A of this Part in computer readable form;
 2. In computer readable form, a list of the names and addresses of all consumers who were sent rebate checks pursuant to this Part, and for each name included on the list, the amount, check number, and mailing date of every rebate check sent;

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3. In computer readable form, a list of the names and addresses of all consumers who contacted respondent or were referred to respondent by the Commission in accordance with sub-part D of this Part;
4. Copies of all correspondence and other communications to, from, or concerning all consumers who, after the date of service of this order, requested a rebate pursuant to this Part but were refused, and the reason(s) for denying the rebate;
5. In computer readable form, a list of the names and addresses of all consumers whose rebate checks were returned to respondent as undeliverable; and
6. All other documents and records evidencing efforts made and actions taken by respondent to identify, locate, contact, and provide funds to consumers pursuant to this Part.

VI.

IT IS FURTHER ORDERED that respondent InPhonic, 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. A specimen copy of all advertisements or rebate forms containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All written or electronic complaints relating to rebates (whether received directly, indirectly or through any third party) and any responses to those complaints.

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VII.

IT IS FURTHER ORDERED that respondent InPhonic, 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 whose duties include the exercise of managerial responsibility with respect to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

VIII.

IT IS FURTHER ORDERED that respondent InPhonic, 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.

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IX.

IT IS FURTHER ORDERED that respondent InPhonic, 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 it has complied with this order.

X.

This order will terminate on June 4, 2027, 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.

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APPENDIX A

[InPhonic, Inc. Letterhead]

[Date]

Re: The Enclosed Rebate Check

Dear [Customer Name]:

Our records show that during the period from October 1, 2004 to the present, you purchased a cellular phone with service from InPhonic or one of its affiliated companies. You also applied for, but never received, a rebate in the amount of [amount of check].

InPhonic has entered into a settlement with the Federal Trade Commission regarding certain of its rebate offers. We are sending you the enclosed check in accordance with that agreement.

Please note: BY ENDORSING THE CHECK, YOU ARE AFFIRMING THAT YOU ARE ENTITLED TO ONE OR MORE REBATES, AND ARE AGREEING THAT YOU HAVE NO FURTHER CLAIMS AGAINST INPHONIC (OR ANY OF ITS SUBSIDIARIES, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) WITH REGARD TO THE REBATE(S) FOR WHICH YOU ARE BEING PAID.

For more information on this agreement, go to [link to FTC web page contain InPhonic press release].

Sincerely,

InPhonic, Inc.

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APPENDIX B

InPhonic, Inc.
[Address]

FORWARDING

AND RETURN POSTAGE GUARANTEED

[Customer Address]

ATTENTION:
REGARDING YOUR

IMPORTANT REBATE INFORMATION
INPHONIC CELL PHONE PURCHASE

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from InPhonic, Inc. (“InPhonic”).

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.

InPhonic, located in Washington, D.C., is an online marketer of wireless telephone packages. Each wireless telephone package includes a name-brand wireless device and a wireless service contract with a national or regional wireless carrier. This matter concerns allegedly deceptive and unfair practices regarding InPhonic’s advertised mail-in rebates.

The FTC complaint alleges that in representing that substantial mail-in rebates were available to purchasers of its wireless telephone packages, InPhonic failed to disclose, or failed to adequately disclose that: 1) consumers would not be able to submit a rebate request until at least three or six months after purchase; 2) consumers would be required to submit wireless bills establishing three or six months of continuous wireless service in good standing; 3) consumers would not receive their rebate check until approximately six or nine months after purchase; 4) an email address would be required to be eligible for the rebate; 5) consumers who changed their wireless phone numbers after purchase would be disqualified from receiving a rebate; and 6) any rebate submission that did not strictly comply with all rebate terms and conditions or that was deemed in any way illegible could be rejected with little or no opportunity to resubmit. The

Analysis to Aid Public Comment

complaint alleges that the failure to disclose or adequately disclose these material facts is a deceptive practice.

The complaint also alleges that InPhonic misrepresented that consumers seeking to redeem its “customer appreciation rebate” needed to establish that their first three months of wireless service had been paid in full. According to the complaint, numerous consumers who waited to submit their fourth wireless bill in order to establish that their first three months of wireless service had been paid in full were unable to submit the rebate request within the 120-day time period specified in the offer, and InPhonic rejected such rebate requests as untimely. The complaint further alleges that Inphonic misrepresented that consumers whose rebate requests contained missing, incorrect, or illegible information would be given a reasonable opportunity to resubmit their request.

According to the FTC complaint, in numerous cases, InPhonic rejected rebate requests, or consumers were prevented from submitting valid requests, because InPhonic failed to supply to consumers with one or more pieces of required documentation and consumers, despite their best efforts, were unable to obtain such documentation from InPhonic. According to the complaint, many consumers did not receive the required rebate redemption form, a box containing a required UPC code, and/or a required AGuide to Wireless Service” and, despite repeated attempts to contact respondent, were unable to obtain the documentation. The complaint alleges that this constitutes an unfair practice.

Finally, according to the complaint, InPhonic promised to provide consumers with rebate checks within 12 weeks of rebate submission, if they purchased a wireless phone and service plan, and submitted a valid rebate request with supporting documentation. The complaint alleges that after receiving rebate requests in conformance with these terms, InPhonic extended the time period in which it would deliver the rebates without consumers agreeing to this extension of time and failed to deliver

Analysis to Aid Public Comment

the rebates to consumers within the promised time period. According to the complaint, this constitutes an unfair business practice.

The proposed consent order contains provisions designed to prevent InPhonic from engaging in similar acts and practices in the future and to redress consumers. Part I.A. of the proposed order prohibits InPhonic from making a claim about the amount of any rebate, unless it discloses, clearly and conspicuously, unavoidably, and prior to consumers incurring any financial obligation: any time period that consumers must wait before submitting a rebate request; that consumers who change their wireless phone numbers after purchase are disqualified from receiving a rebate, if that is the case; that any rebate submission that does not strictly comply with all rebate terms and conditions, or that is deemed in any way illegible, may be rejected with little or no opportunity to resubmit, if that is the case; any requirement for submitting bills, records, or any other documentation, with a rebate request; when consumers can expect to receive their rebates; and that an email address is required to be eligible for the rebate, if that is the case. Part I.B. of the proposed order prohibits InPhonic from making a claim about the amount of any rebate unless it also discloses, clearly and prominently, on any rebate coupon or form, all terms, conditions, or other limitations of the rebate offer.

Part II of the proposed order prevents InPhonic from misrepresenting what documentation consumers must submit with any rebate request and from misrepresenting any material terms of any rebate program.

Part III of the proposed order prohibits InPhonic from representing that consumers will have the opportunity to resubmit deficient rebate requests, unless it gives consumers a reasonable period of time in which to resubmit such requests and notifies them precisely how to correct any deficiencies.

Analysis to Aid Public Comment

Part IV.A. of the proposed order prohibits InPhonic from failing to provide, or to make reasonably available to consumers, all required rebate documentation. Part IV.B. prohibits InPhonic from making any representation about the time in which any rebate will be mailed, or otherwise provided to purchasers, unless it has a reasonable basis for the representation at the time it is made. Part IV.C. prohibits InPhonic from failing to provide any rebate within the time specified or, if no time is specified, within thirty days.

Part V of the proposed order requires InPhonic to send rebates to eligible purchasers. Eligible purchasers include consumers whose rebate requests were previously denied solely on the basis of one or more of the following reasons: 1) the consumer changed his/her wireless phone number; 2) the signature on the rebate form was illegible; 3) InPhonic failed to provide the consumer with required information or documents; 4) the email address was missing from the rebate form; or 5) the request was late due to the consumer's submission of a fourth wireless bill. In addition, eligible purchasers include consumers whose requests were denied due to a curable deficiency, but where the consumer was not given at least thirty days to resubmit the request.

Parts VI through IX of the proposed order are reporting and compliance provisions. Part X of the proposed order is a "sunset" provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. 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

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

Docket No. C-4193; File No. 062 3094
Complaint, June 4, 2007 – Order, June 4, 2007

This consent order addresses cash rebate offers that Soyo advertised to consumers. The complaint alleges that Soyo engaged in deceptive practices relating to these rebate offers and that thousands of consumers who submitted valid requests for rebates since 2004 experienced substantial, unreasonable delays, including delays of one year or longer. The order prevents Soyo from engaging in similar acts and practices in the future by prohibiting Soyo from misrepresenting any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate. Additionally the order prohibits misrepresenting the time in which any rebate will be mailed and from failing to provide any rebate within the time specified, or if no time is specified, within thirty days.

Participants

For the *Commission*: *Linda K. Badger, Matthew D. Gold, and Kerry O'Brien.*

For the *Respondent*: *Dan P Sedor, Jeffer Mengels Butler & Marmaro LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Soyo, Inc., a corporation (“Soyo” or “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 is a Nevada corporation with its principal office or place of business at 1420 South Vintage Avenue, Ontario, California 91761.