

Complaint

IN THE MATTER OF

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

Docket C-4256; File No. 082 3114
Complaint, April 15, 2009 – Decision, April 15, 2009

This consent order addresses the offer of rebates by American Telecom Services, Inc., a company that has advertised and sold products to the public, including telephones and telephone services. The order prohibits the respondent from misrepresenting, in any manner, expressly or by implication, the time in which any rebate will be mailed, or otherwise provided to consumers; from failing to provide any rebate within the time specified or, if no time is specified, within 30 days of receiving a properly completed request; and from misrepresenting any material terms of any rebate program, including the status of or reasons for any delay in providing any rebate. The order requires the respondent to make available to the Commission, upon request, a specimen copy of all advertisements or rebate forms containing the representation covered by this order, all materials that were relied upon in disseminating the representation, and all written or electronic complaints relating to rebates and any responses to those complaints. The order also requires the respondent to provide a copy of the 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. In addition, the order requires the respondent to notify the Commission prior to any change in the corporation that may affect compliance obligations arising under the order and to file periodic reports with the Commission.

Participants

For the *Commission*: Linda K. Badger and Matthew D. Gold.

For the *Respondent*: Sean P. Gates, Morrison & Foerster.

COMPLAINT

The Federal Trade Commission, having reason to believe that American Telecom Services, Inc., a corporation (“ATS” or

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“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 6 Concourse Parkway NE, Suite 1525, Atlanta, GA 30328-6117.

2. Respondent has advertised, labeled, offered for sale, sold, and distributed products to the public, including telephones and phone services. Respondent has distributed these products to the public through large, nationwide retailers.

3. To make its products more attractive to retailers and their customers, ATS has offered numerous mail-in rebates ranging from \$5 to \$50 in value. Most of ATS’s rebate offers have required consumers to fill out a rebate form, provide proof-of-purchase documentation, and “activate” an account entitling the consumer to 100 free long distance minutes. ATS has used third party fulfillment houses to process and pay rebate requests received from its customers.

4. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

ATS’S REBATE ADVERTISEMENTS

5. Respondent has disseminated or has caused to be disseminated advertisements and rebate forms for mail-in rebates, including but not necessarily limited to the attached Exhibit A. These advertisements contain the following statements:

“American Telecom **Pay N’Talk**

\$15 REBATE

...

Complaint

Terms and Conditions:

...

Allow 8 weeks to receive your rebate check.

....”

(Excerpts from Exhibit A, an ATS rebate form for a rebate offered on a Pay N’Talk telephone).

FALSE SHIPMENT REPRESENTATION

6. Through the means described in Paragraph 5, including but not necessarily limited to Exhibit A, respondent has represented, expressly or by implication, that purchasers of eligible ATS products will receive rebate checks within eight weeks after receipt of their properly completed requests.

7. In truth and in fact, in numerous instances, purchasers of eligible ATS products did not receive rebate checks within eight weeks after receipt of their properly completed requests. Tens of thousands of consumers who submitted properly completed requests for rebates since 2006 have experienced substantial delays, including delays of one year or longer. These delays have been due, in part, to ATS’s inability to pay its third party fulfillment houses, as well as its refusal to timely pay third party fulfillment houses with which it had disagreements. Therefore, the representation set forth in Paragraph 6 was, and is, false or misleading.

8. 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.

Complaint

THEREFORE, the Federal Trade Commission this fifteenth day of April, 2009, has issued this complaint against respondent.

By the Commission.

FEDERAL TRADE COMMISSION DECISIONS
VOLUME 147

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EXHIBIT A

\$15 REBATE 											
To qualify for rebate, you must: 1. Purchase the specified product between the promotion dates listed on this form. 2. Reveal the unique PIN # located on the top left hand corner of the "My Account Card" by scratching off the silver area. Write the PIN # in space provided below. 3. Find the unique S/N # (Serial Number) located on the bottom left corner of the "My Account Card" and write it in the space provided below. 4. Activate the "My Account Card" before submitting your rebate claim. Attention: Your rebate is not valid unless you have pressed the money-saving green button to access your free minutes. 5. Submit postmarked form within 30 days from purchase date. 6. Mail the following in one envelope to the address below: • This completed rebate form (incomplete forms will not be accepted). • Original or photocopy of the receipt (circle item purchased). • Original 12-digit UPC barcode cut from the product packaging. Mail to: PayN'Talk Rebate Offer # H811559 P.O. Box 100546 White Bear Lake, MN 55110-0546	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #f0f0f0; text-align: center; font-weight: bold;">Product</td> </tr> <tr> <td>PayN'Talk Analog Master RA22304H</td> </tr> <tr> <td style="background-color: #f0f0f0; text-align: center; font-weight: bold;">Promotion Dates</td> </tr> <tr> <td>6/1/07-6/1/09</td> </tr> <tr> <td style="background-color: #f0f0f0; text-align: center; font-weight: bold;">Postmark Date</td> </tr> <tr> <td>Within 30 Days from Purchase Date</td> </tr> <tr> <td style="background-color: #f0f0f0; text-align: center; font-weight: bold;">Valid Retailer</td> </tr> <tr> <td>Walgreen's</td> </tr> <tr> <td style="background-color: #f0f0f0; text-align: center; font-weight: bold;">Rebate Amount</td> </tr> <tr> <td>\$15.00</td> </tr> </table>	Product	PayN'Talk Analog Master RA22304H	Promotion Dates	6/1/07-6/1/09	Postmark Date	Within 30 Days from Purchase Date	Valid Retailer	Walgreen's	Rebate Amount	\$15.00
Product											
PayN'Talk Analog Master RA22304H											
Promotion Dates											
6/1/07-6/1/09											
Postmark Date											
Within 30 Days from Purchase Date											
Valid Retailer											
Walgreen's											
Rebate Amount											
\$15.00											
Customer Information (please print clearly) *Full Name: _____ *Address: _____ *City: _____ *State: _____ *Zip: _____ Phone: _____ email address: _____ *Account Card PIN #: _____ *Account Card S/N # (Serial Number): _____ Signature of Purchaser: _____ Date Submitted: _____ Please keep copies of entire submission for your records. To check the status of your claim visit www.rebate-zone.com/ats Terms and Conditions: You must submit all of the required information and the completed rebate form. Request for rebates must be postmarked within 30 days from purchase date. LIMIT ONE REBATE PER HOUSEHOLD. Checks are paid in U.S. funds only to U.S. residents and must be cashed within 90 days of issuance. American Telecom Services, Inc. is not responsible for lost or stolen checks. Checks will not be mailed to PO boxes. All federal, state, and local rules apply. Offer not available in all areas or stores, outside the U.S., or to customers under 18 years of age. Rebate offer void where prohibited or restricted by law. We reserve the right to modify specifications and terms without notice. Late, incomplete, postage due, and illegible claims will be rejected. Fraudulent mailing of multiple requests can result in federal prosecution under U.S. Mail Statutes (18 USC, 1341/1342). Offer cannot be combined with any other offer or rebate. Allow 8 weeks to receive your rebate check. To check the status of your claim, call 1-866-818-8964 or visit www.rebate-zone.com/ats. (ABQ)											

EXHIBIT A

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 the 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 American Telecom Services, Inc., is a Delaware corporation with its principal office or place of business at 6 Concourse Parkway NE, Suite 1525, Atlanta, GA 30328-6117.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

Decision and Order

ORDER**DEFINITIONS**

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

1. Unless otherwise specified, “respondent” shall mean American Telecom Services, 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. “Properly completed request” shall mean a rebate request made in compliance with the express terms of the rebate offer, including the submission of all documentation, information, and other materials required by 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 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, the time in which any rebate will be mailed, or otherwise provided to consumers;

Decision and Order

- 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; 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 respondent ATS, 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.

III.

IT IS FURTHER ORDERED that respondent ATS, 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, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to

Decision and Order

future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent ATS, 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.

V.

IT IS FURTHER ORDERED that respondent ATS, 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.

Decision and Order

VI.

This order will terminate on April 15, 2029, 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 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 American Telecom Services, Inc. (“ATS”). ATS, with headquarters in Atlanta, Georgia, is a distributor of telephones and phone services.

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 ATS’s cash rebate promotions. To make its products more attractive to retailers and their customers, ATS has offered numerous mail-in rebates ranging from \$5 to \$50 in value. In implementing these promotions, ATS used third party fulfillment houses to process and pay rebate requests received from its customers. The complaint alleges that ATS engaged in deceptive practices relating to these rebate offers. Specifically, the complaint alleges that ATS falsely represented that purchasers of eligible ATS products will receive rebate checks within eight weeks after receipt of their properly completed requests. The proposed complaint further alleges that tens of thousands of consumers who submitted properly completed requests for rebates since 2006 have experienced substantial delays, including delays of one year or longer. According to the complaint, these delays have been due, in part, to ATS’s inability to pay its third party fulfillment houses, as well as its refusal to timely pay third party fulfillment houses with which it had disagreements.

The proposed order contains provisions designed to prevent ATS from engaging in similar acts and practices in the future. Part I of the proposed order prohibits ATS from misrepresenting the time in which any rebate will be mailed and from failing to provide any

Analysis to Aid Public Comment

rebate within the time specified, or if no time is specified, within thirty days. This provision also prohibits the company from misrepresenting 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 standard reporting and compliance provisions. Part VI provides that the order will terminate after twenty (20) 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

**NATIVE ESSENCE HERB COMPANY,
MARK J. HERSHISER,
AND
MARIANNE HERSHISER**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. 9328; File No. 082 3115
Complaint, September 16, 2008 – Decision, May 7, 2009*

This consent order addresses the respondents' advertising and promotion of Native Essence (Rene Caisse) Formula tea and extract, Native Essence Plus tea and extract, Native Essence with Cat's Claw tea and extract, chaparral herb, Maitake mushroom extract, and Mai-T Mushroom Plus Formula extract. The complaint alleges that respondents have claimed that their products are effective in treating and curing various forms of cancer and in reducing the size of, or eliminating, cancerous tumors. The consent order requires respondents to have competent and reliable scientific evidence substantiating any claim that their products are effective in the treatment or cure of cancer; prevent or lower the risk of cancer; are effective in reducing the size of, or eliminating, cancerous tumors; or is safe or non-toxic or has no side effects.

Participants

For the *Commission*: Rich Cleland, Matthew D. Gold, Rosemary Rosso, and Erika Wodinsky.

For the *Respondents*: Richard A. Jaffe and Judith A. Rosenstein.

COMPLAINT

The Federal Trade Commission, having reason to believe that Native Essence Herb Company, a corporation, Mark J. Hershiser, individually, d/b/a Native Essence Herb Company, and as an officer of the corporation, and Marianne Hershiser, individually, d/b/a Native Essence Herb Company, and as an officer of the corporation