

Complaint

IN THE MATTER OF

**SONY COMPUTER ENTERTAINMENT
AMERICA LLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4514; File No. 122 3252
Complaint, March 24, 2015 – Decision, March 24, 2015*

This consent order addresses Sony's false advertising claims about the "game changing" technological features of its PlayStation Vita handheld gaming console during its U.S. launch campaign in late 2011 and early 2012. According to the complaint, Sony advertised several notable features of the PS Vita. First, it promoted the "remote play" feature of the PS Vita as a way that consumers could access games already residing on their PS3 consoles and play them remotely on the PS Vita anywhere with a Wi-Fi connection. Second, its advertisements represented that, with the "cross platform gaming" or "cross save" feature, consumers could begin playing a game on a PS3 console, save their progress at any point in the game, and then continue that game where they left off on the PS Vita. Third, with the "3G version" of the PS Vita, available for an extra \$50 and monthly fees, Sony represented that consumers could access a 3G network to play games live with others. The complaint alleges that Sony's representations regarding these features were false or misleading and thus violated Section 5 of the FTC Act. Under the consent order, Sony is barred from making misleading advertising claims about the features or attributes of its handheld gaming consoles in the future. Sony must also provide consumers who bought a PS Vita gaming console before June 1, 2012, either a \$25 cash or credit refund or a \$50 merchandise voucher for select video games and/or services.

Participants

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

For the *Respondent*: Stuart Friedel, C. Andrew Keisner, and Ronald Urbach, Davis & Gilbert LLP.

COMPLAINT

The Federal Trade Commission, having reason to believe that Sony Computer Entertainment America LLC, a limited liability company ("Respondent" or "SCEA"), 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:

Complaint

1. Respondent Sony Computer Entertainment America LLC is a limited liability company with its principal office or place of business at 2207 Bridgepoint Pkwy, San Mateo, California 94404.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed products to the public, including the PlayStation Vita ("PS Vita"). The PS Vita is a game console that Respondent first offered for sale in the United States on February 22, 2012, for approximately \$250. The PS Vita is part of Respondent's line of game consoles, including the PlayStation 3 video game console ("PS3") that allows consumers to play video games on their television sets. Unlike the PS3, the PS Vita is a handheld, portable game console that allows consumers to play games away from their television sets. In addition to selling game consoles, Respondent is one of the many game developers writing game titles for use on its PS3 and PS Vita game consoles. At the time the PS Vita was launched, "MLB 12: The Show," "Killzone 3," and "Unit 13" were popular SCEA titles for the PS3.

3. Respondent's advertisements promoted, among other things, three notable features of the PS Vita. First, it promoted the "remote play" feature as a way that consumers could access games already residing on their PS3 consoles and play them remotely on the PS Vita anywhere with a Wi-Fi connection. Second, advertisements represented that, with the "cross platform gaming" or "cross save" feature, consumers could begin playing a game on a PS3, save their progress at any point in the game, and then continue that game where they left off on the PS Vita. Third, with the "3G version" of the PS Vita, available for an extra \$50 and monthly fees, advertisements represented that consumers could access a 3G network to play games live with others ("multiplayer gaming").

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.

5. Respondent has disseminated or has caused to be disseminated advertisements for the PS Vita, including but not necessarily limited to the attached Exhibits A through H. These advertisements contain the following statements and depictions:

Complaint

- a. Internet Advertisement and Promotional Video (Exhibit A, transcript, and Exhibit B, DVD containing ad)

[Voice Over]: “With PlayStation’s Cross Platform Play, you’ve got game, wherever you go.” [Depiction of television set and PS3 console, with PS3 game running on the television screen]

[Voice Over]: “With Cross Platform Gaming, you can play your PS3 game, pause it, then pick up right where you left off on your Vita.”

[Depiction of a PS3 game being played on a television set, with the words “CROSS PLATFORM GAME” appearing above it. An animated hand pushes a button to pause the game on a PS3 remote, and the PS3 remote morphs into a PS Vita. Then the hand pushes a button on the PS Vita, and the same PS3 game begins to play on the PS Vita screen]

...

[Depiction of a PS Vita console with game title, Killzone 3, playing on screen]

[Voice Over]: “And with Remote Play, your PS Vita can tap into your PlayStation 3, so PlayStation 3 games and content are easily accessible on the go.” [Depiction of images from Killzone 3 game being played on a television in a living room setting. Also depicts Killzone 3 being played on the PS Vita, but handheld console moves away from the living room to a bakery or cafe setting]

[On-screen Super]: “**KILLZONE 3**”

[On-screen Super]: “**REMOTE PLAY**”

[Voice Over]: “The world is in play, with PlayStation Vita. PlayStation.”

[On-screen Super]: “**NEVER STOP PLAYING**”

Complaint

- b. Television Commercial (Exhibit C, transcript, and Exhibit D, DVD containing ad)

[Depiction of a young man sitting on a couch, playing the PS3 game, “MLB 12: The Show”]

[Voice Over]: “It’s a problem as old as gaming itself. Stay home and just keep playing, or get to work on time so your coffee breath boss doesn’t ride you like a rented scooter.”

[Depiction of the inside of a subway car]

[On-screen Super]: “Simulated screen visual”

[Voice Over]: “Who says you have to choose?”

[On-screen Super]: “**CROSS PLATFORM PLAY**”

[Depiction of the man pausing the PS3 game, picking up the PS Vita, viewing a download screen, and walking out the door, continuing to play the same game on his PS Vita while walking down the street]

[Voice Over]: “Your PS3 stays home, but the game goes with you.”

[On-screen Super]: “**#GAMECHANGER**”

[Voice Over]: “Never stop playing.”

[On-screen Super]: “**NEVER STOP PLAYING**”

[Voice Over]: “PlayStation Vita”

[On-screen Super]: “**PS VITA**”

- c. In-Store Advertisement (Exhibit E)

“**NEVER STOP PLAYING.**

[Depiction of PS Vita]

Complaint

ALWAYS COMPETITIVE WITH 3G.
Game with your friends when you want and in more places.

...

Cross Platform Game Save

Play on your PS3 system and then continue your game on the go with PS Vita.

[Depictions of the game MLB 12: The Show, including a depiction of a PS3 and a PS Vita connected by arrows, displaying the same screen shot from a baseball game.]”

d. Internet Advertisement (Exhibit F)

“PlayStation Vita System Features

...

3G/AT&T

The new PS Vita 3G/Wi-Fi System, powered by AT&T’s Mobile Broadband Network, will change the way you game with real-time scores and game ranking news feeds, competitive multiplayer game sessions, and cross-game text messaging with Party. Game at the speed of your mobile life style.”

e. Television and Internet Commercial (Exhibit G, transcript, and Exhibit H, DVD containing ad)

[Depiction of a young man walking down the street, playing the shooting game, “Unit 13” on his PS Vita]

[Voice Over]: “Suddenly it doesn’t feel so safe out there.”

[On-screen Super]: “Simulated screen visual”

Complaint

[Voice Over]: “People are lookin’ at ’cha with bad intentions. Because with Vita, your spot on the leader board is always up for grabs.”

[Depiction of the young man passing strangers on the street who also appear to be playing on a PS Vita. They look furtively at each other. A man passing by on a bus, who also appears to be playing a PS Vita, nods to the young man.]

[Voice Over]: Find a friend, find an enemy, find a game anywhere, anytime.”

[On-screen Super]: “**3G GAMING**”

[On-screen Super]: “**#GAMECHANGER**”

[Voice Over]: “Never Stop Playing”

[On-screen Super]: “**NEVER STOP PLAYING**”

[Voice Over]: “PlayStation Vita”

[On-screen Super]: “**PS VITA**”

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

- a. With remote play, PS Vita users can easily access their PS3 games on the PS Vita.
- b. With remote play, PS Vita users can easily access Killzone 3 and other similar, data-rich PS3 games on the PS Vita.
- c. PS Vita users are able to pause any PS3 game they are playing on their PS3 consoles at any point in the game, and continue to play that game where they left off on the PS Vita.
- d. PS Vita users who own the 3G version are able to engage in live, multiplayer gaming through a 3G network.

Complaint

7. In truth and in fact:

- a. With remote play, PS Vita users cannot easily access their PS3 games on the PS Vita. Most PS3 games are not remote playable on the PS Vita. Respondent did not specifically design the PS3 system to support remote play functionality.
- b. With remote play, PS Vita users cannot easily access Killzone 3 and other similar, data-rich PS3 games on the PS Vita. Respondent never enabled remote play on its Killzone 3 title, and very few, if any, other PS3 games of similar size and complexity are remote play compatible.
- c. PS Vita users are not able to pause any PS3 game they are playing on their PS3 consoles at any point in the game, and continue to play that game where they left off on the PS Vita. This cross platform gaming feature is only available for a limited number of PS3 game titles, and the pause and save feature varies significantly by game. For example, with respect to “MLB 12: The Show,” consumers are only able to pause and save the game to the PS Vita after having finished the entire baseball game (all nine innings) on the PS3.
- d. PS Vita users who own the 3G version are not able to engage in live, multiplayer gaming through a 3G network. PS Vita users are restricted to asynchronous or “turn-based” multiplayer gaming with the 3G version of the PS Vita.

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

8. Through the means described in Paragraph 5, Respondent has represented, expressly or by implication, that consumers can play PS3 games, such as “MLB 12: The Show,” on the PS3, pause the game, and continue that game on the PS Vita. Respondent has failed to disclose that to use this feature, consumers must own two versions of the same game for each

Complaint

console (*e.g.*, two versions of “MLB 12: The Show”), one for the PS3 and one for the PS Vita. This fact would be material to consumers in their purchase and use of the PS Vita. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

9. The acts and practices of Respondent as alleged in this complaint constitute 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 twenty-fourth day of March, 2015, has issued this complaint against Respondent.

By the Commission.

Complaint

EXHIBIT A

Transcription of Internet Advertisement and Promotional Video

Voice Over: "With PlayStation's Cross Platform Play, you've got game, wherever you go."
["PSVITA PlayStation Vita ↔ PS3 CROSS PLATFORM PLAY (PS3)" text appears on screen.]

Voice Over: "With Cross Platform Gaming, you can play your PS3 game,"
["CROSS PLATFORM GAME" text appears above TV and PS3 console]

Voice Over: "pause it,"
["GAME PAUSED" text appears on TV screen, and then on the screen of a PS Vita.]

Voice Over: "then pick up right where you left off on your Vita."

Voice Over: "PlayStation 3 and PS Vita players can also go head-to-head thanks to Cross Platform Game Play,"
["CROSS PLATFORM GAME PLAY" text appears at top, "WIPEOUT 2048" text appears in lower left corner]

Voice Over: "And with Remote Play your PS Vita can tap into your PlayStation 3,"
["KILLZONE 3" text appears in lower left corner.]

Voice Over: "so PlayStation 3 games and content are easily accessible on the go."
["REMOTE PLAY" text appears at top; "KILLZONE 3" text appears in lower left corner.]

Voice Over: "The world is in play with PlayStation Vita."
["KILLZONE 3" text appears in lower left corner. "REMOTE PLAY" text appears at top.]

Voice Over: "PlayStation."
["NEVER STOP PLAYING" text appears on screen.]

Complaint

EXHIBIT B

**[Redacted from the Public Record, but Incorporated by
Reference]**

Complaint

EXHIBIT C



Commercial Script - Dilemma



(Audio Effects and Music Throughout; Announcer:) It's a problem as old as gaming itself. Stay home and just keep playing, or get to work on time so your coffee breath boss doesn't ride you like a rented scooter. Who says you have to choose? Your PS3 stays home, but the game goes with you.

(Visual:) CROSS PLATFORM PLAY (Announcer:) Never Stop Playing. PlayStation Vita. **(Visual:) #Gamechanger Never Stop Playing PS Vita Sony Make Believe**

PlayStation Vita, February 29, 2012

Ipsos ASI

Complaint

EXHIBIT D

**[Redacted from the Public Record, but Incorporated by
Reference]**

Complaint

EXHIBIT E



Complaint

EXHIBIT F

[Home](#) [PlayStation®Vita](#) [Features](#)

[Like](#) 3k [Tweet](#) 433 52

PlayStation®Vita System Features

[Buy P S Vita System](#)

Click on icons to explore features

[back to top](#)

3G/AT&T

The new PS Vita 3GMM-Fi System, powered by AT&T's Mobile Broadband Network, will change the way you game with real-time scores and



1 of 6
PlayStation®Vita Features - PS Vita 3G/Wi-Fi, Front & Rear Cameras S...

4/19/2012 11:01 AM
<http://us.playstation.com/psvita/features/>

game ranking news feeds, competitive multiplayer game sessions, and cross-game text messaging with Party. Game at the speed of your mobile life style.

[Watch the 3G Connectivity Video](#)

[More about 3G by AT&T](#)

[View systems and bundles](#)



PlayStation®Vita System Connects Players Through Games

Exclusive Feature Story [Read More](#)

Complaint

EXHIBIT G

Commercial Script – Bad Intentions

(Audio Effects and Music Throughout; Announcer:) Suddenly it doesn't feel so safe out there. People are lookin at'cha with bad intentions. Because with Vita, your spot on the leader board is always up for grabs. Find a friend, find an enemy, find a game anywhere, anytime. **(Visual:)** 3G gaming **(Announcer:)** Never Stop Playing. PlayStation Vita. **(Visual:)** #Gamechanger Never Stop Playing PS Vita Sony Make Believe

PlayStation Vita, February 29, 2012

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Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“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 a complaint which the Western Region-San Francisco proposed to present to the Commission for its consideration and which, if issued, would charge the respondent with violations of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“consent agreement”), which includes: a statement by respondent that it neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, and, only for purposes of this action, admits the facts necessary to establish jurisdiction; 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 Federal Trade Commission Act, and that a 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 for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sony Computer Entertainment America LLC is a Delaware limited liability company with its principal office or place of business at 2207 Bridgepoint Pkwy, San Mateo, California 94404. SCEA is a wholly-owned subsidiary of Sony Corporation of America, Inc., headquartered in New York, New York.

Decision and Order

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

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

1. Unless otherwise specified, “respondent” shall mean Sony Computer Entertainment America LLC, a limited liability company, its successors and assigns, and its officers, agents, representatives, and employees.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Clearly and prominently” shall mean as follows:
 - a. In textual communications (*e.g.*, printed publications or words displayed on the screen of a computer), the required disclosures are of a type, size, and location sufficiently noticeable for an ordinary consumer to read and comprehend them, in print that contrasts with the background on which they appear;
 - b. In communications disseminated orally or through audible means (*e.g.*, radio or streaming audio), the required disclosures are delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend them;
 - c. In communications disseminated through video means (*e.g.*, television or streaming video), the required disclosures are in writing in a form consistent with subparagraph (a) of this definition and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend them, and in the same language as the predominant language that is used in the

Decision and Order

communication. Provided, however, that, for communications disseminated through programming over which respondent does not have editorial control (*e.g.*, an endorser's appearance on a news program or talk show), the required disclosures may be made in a form consistent with subparagraph (b) of this definition;

- d. In communications made through interactive media, such as the Internet, online services, and software, the required disclosures are unavoidable and presented in a form consistent with subparagraph (a) of this definition, in addition to any audio or video presentation of them; and
 - e. In all instances, the required disclosures are presented in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication of them.
- 4. "Eligible Purchaser" means any consumer who purchased the PlayStation Vita before June 1, 2012 and did not return it for a full refund.
 - 5. "Handheld Game Console Product" means any handheld portable electronic device designed for and primarily used for playing video games that has its own screen, speakers and controls in one unit, including the PlayStation Vita ("PS Vita") and the PlayStation Portable ("PSP").
 - 6. "Home Game Console Product" means any electronic device designed for and primarily used for playing video games on a separate television screen, including the PlayStation 3 ("PS3") and the PlayStation 4 ("PS4").
 - 7. The term "including" in this order means "without limitation."

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, trade name, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, any material gaming feature or capability of such product when used as a standalone device to play video games.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of the Handheld Game Console Product or Home Game Console Product to interact with, or connect to, any other Handheld Game Console Product during gaming, unless at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any Handheld Game Console Product or Home Game Console Product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, including through the use of a product name, endorsement, depiction, or illustration, about the material capability of any Handheld Game Console Product to interact with, or connect

Decision and Order

with, any Home Game Console Product during gaming, unless it discloses, clearly and prominently, and in close proximity to the representation, that consumers must purchase two versions of the same video game, one for the Handheld Game Console Product and one for the Home Game Console Product, if such is the case.

IV.

IT IS FURTHER ORDERED that respondent shall offer Eligible Purchasers a check or credit for twenty-five dollars (\$25) or the alternative of a voucher (or entitlement) for merchandise, video games, and/or services with a retail value of fifty dollars (\$50) or more. Respondent shall provide such redress to Eligible Purchasers as follows:

- A. Within five (5) days after the date of service of this order, respondent shall provide a notice, via email, to each Eligible Purchaser whom it can reasonably identify. Respondent shall send the notice to the current or last known email address for each such Eligible Purchaser. The electronic notice shall be in the form set out in Appendix A. The subject line of the email required by this subpart shall read “Important: Sony Computer Entertainment America offering money back or merchandise to certain purchasers of PlayStation Vita.” No additional information, other than that described in subpart IV.D. of this order, shall be included in or added to the notice (Appendix A) required by this subpart.
- B. Within five (5) days after the date of service of this order, respondent shall post a notice on its website informing Eligible Purchasers who were not provided with the notice described in subpart IV.A. above, how they can obtain redress. A prominent link to this notice shall be posted on the first page of the PlayStation Vita section of its website, and shall read “Important: Sony Computer Entertainment America offering money back or merchandise to certain purchasers of PlayStation Vita.” This notice shall include access, by way of a link or other means, to a form set out in Appendix B to this order, asking these

Decision and Order

consumers to provide sufficient credible evidence that they qualify as Eligible Purchasers. No additional information, other than that described in subpart IV.D. of this order, shall be included in or added to Appendix B. Any consumer whom respondent does not notify under subpart IV.A. of this order, and who contacts respondent or the Commission in any manner regarding this Part, shall be directed to this notice. Respondent may decline a request for redress made under subparts IV.A. or IV.B. if it has a reasonable good faith belief based on the evidence that the request is not from an Eligible Purchaser or is fraudulent.

- C. Respondent shall honor requests for redress from Eligible Purchasers who submit the appropriate forms, pursuant to subparts IV.A. or IV.B., within ninety (90) days after the date of service of this order (“Redress Period”). The period for fulfillment of redress requests is set forth in subpart IV.E. of this order.
- D. In the notices required by subparts IV.A. and IV.B., respondent shall provide, clearly and prominently, all information necessary for Eligible Purchasers to evaluate this offer before making a decision between the cash payment and the alternative of a voucher (or entitlement) for merchandise, video games, and/or services, and all information necessary to redeem the offer.
- E. Respondent shall send all twenty-five dollar (\$25) checks promptly through the U.S. Postal Service or shall, at the discretion of the Eligible Purchaser, promptly provide a twenty-five dollar (\$25) credit to the Eligible Purchaser’s PSN account. Respondent shall promptly provide secure vouchers (or entitlements) for merchandise, video games, and/or services, redeemable through PSN accounts, to all Eligible Purchasers who choose this alternative. For the purposes of this order, “promptly” shall mean within sixty (60) days after the end of the Redress Period.

Decision and Order

- F. For a period of one hundred eighty (180) days after the date of service of this order, respondent shall provide, and adequately staff during ordinary business hours, a toll-free telephone number to answer questions about this program.
- G. Within two hundred ten (210) days after the date of service of this order, respondent shall provide the Commission with a report, in writing, setting forth in detail the manner and form of its own compliance with this Part.

V.

IT IS FURTHER ORDERED that respondent SCEA 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 reasonable notice and request, make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its 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.

VI.

IT IS FURTHER ORDERED that respondent SCEA and its successors and assigns shall deliver a copy of this order to all current and, for the next five (5) years, all future Vice Presidents of Marketing and Directors of Marketing ("Personnel") having primary responsibilities 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 and its

Decision and Order

successors and assigns 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.

VII.

IT IS FURTHER ORDERED that respondent SCEA 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. Unless otherwise directed by a representative of the Commission, all notices required by this Part shall be sent by overnight courier (not the U.S. Postal Service) to the Associate Director of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, with the subject line: In the Matter of Sony Computer Entertainment America LLC, FTC File Number 122-3252. *Provided, however*, that, in lieu of overnight courier, notices may be sent by first-class mail, but only if an electronic version of such notices is contemporaneously sent to the Commission at Debrief@ftc.gov.

VIII.

IT IS FURTHER ORDERED that respondent SCEA and its successors and assigns shall, within sixty (60) days after the date of service of this order, file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form of its own compliance with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, they shall submit additional true and accurate written reports.

Decision and Order

IX.

This order will terminate on March 24, 2035, 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.

Decision and Order

APPENDIX A**CASH BACK OR MERCHANDISE OFFER FROM
SONY COMPUTER ENTERTAINMENT AMERICA LLC**

Dear [NAME]

Our records show that you purchased a PlayStation Vita handheld game console prior to June 1, 2012. The Federal Trade Commission has alleged that some SCEA advertisements for the PlayStation Vita during this period were deceptive. Although SCEA neither admits nor denies liability in connection with this matter, SCEA has agreed to settle the dispute with the Federal Trade Commission by offering either cash back (or credit on your PSN account) or merchandise to customers who purchased a PlayStation Vita before June 1, 2012, and who have not returned the product for a full refund.

Accordingly, we are pleased to offer you the opportunity to receive a check for \$25 (or a \$25 credit on your PSN account). Alternatively, you are eligible to receive a merchandise voucher [or entitlement] that you can use to select from a list of merchandise, video games and/or services. The selection of merchandise, video games and/or services that are available through this offer has a retail value of \$50 or more.

You are eligible to receive either a check for \$25 (or a \$25 credit on your PSN account) or a merchandise voucher [or entitlement], but not both. For details of each offer and to make your choice of the \$25 check (or credit) or the merchandise voucher [or entitlement], please click here [link].

You **MUST** complete and submit the information requested in the above link by [Insert date equal to 90 days from service of this order] to be eligible to receive the \$25 check (or \$25 credit on your PSN account) or merchandise voucher [or entitlement] worth \$50 or more. Please be assured that your acceptance of this offer does not obligate you to purchase anything.

For more information on our settlement with the Federal Trade Commission, please visit www.ftc.gov and search for "Sony Computer Entertainment America."

Decision and Order

If you have any questions, please call Sony Computer Entertainment America claims administration at 1-800-xxx-xxxx.

[CLICK-THROUGH PAGE]

Use this form to choose between a check for \$25 (or a \$25 credit on your PSN account) or a merchandise voucher [or entitlement] worth \$50 or more.

I certify that the information I am providing below is true and accurate, and agree to the provisions as set out below.

Check Next to Each of the Below If It Is True and Accurate:

I certify that I purchased a PlayStation Vita before June 1, 2012.

_____ I certify that I have not returned my PlayStation Vita for a full refund. _____

I certify that I have neither already redeemed this offer, nor made any other consumer redress request for the PlayStation Vita from Sony Computer Entertainment America. _____

Required information:

My PSN ID is _____ (Your PSN ID is the email address where you received this notice.)

Optional Information:

The following information is not required, and will not affect your eligibility to receive either a check (or credit) or a merchandise voucher [or entitlement]. To help facilitate the administration of your request, please provide one of the following (both if you have them):

The SIRIS number _____ or SERIAL number _____ of the PlayStation Vita that you purchased before June 1, 2012. (The SIRIS number and the SERIAL number are found on the bottom edge of your PlayStation Vita product. The SIRIS number is left of the connector port and the SERIAL number is right of the

Decision and Order

connector port. These numbers are also found on the side panel of the PlayStation Vita package.)

Selection of Consumer Redress Offer:

Please select ONE of the following three Consumer Redress Offers. Additional information describing each offer is available by clicking [here](#) [pop-up window or link].

1. _____ I select a \$25 check. Please send the check to me at the following mailing address:

[Fields for entering mailing address]

OR

2. _____ Instead of the \$25 check, I select a \$25 credit to be applied to my PSN account. Additional information describing this offer is available by clicking [here](#) [pop-up window or link].

OR

3. _____ I select the Merchandise Voucher [or Entitlement] good for \$50 or more in value of merchandise, video games and/or services. Additional information describing this offer is available by clicking [here](#) [pop-up window or link].

I understand that by submitting this request and accepting a refund of cash (or credit) or a merchandise voucher [or entitlement] issued through this program, I agree to waive any present or future claims I may have against Sony Computer Entertainment America LLC in connection with the advertising, labeling, promotion, offering for sale or sale of the PlayStation Vita for which I received consumer redress.

To Submit Your Request and Agree to the Above

[CLICK HERE](#)

Decision and Order

APPENDIX B**CASH BACK OR MERCHANDISE OFFER FROM
SONY COMPUTER ENTERTAINMENT AMERICA LLC**

Dear Customer:

If you purchased a PlayStation Vita handheld game console before June 1, 2012, you may be eligible to receive cash back (or credit on your PSN account) or merchandise worth \$50 or more. The Federal Trade Commission has alleged that some SCEA advertisements for the PlayStation Vita during this period were deceptive. Although SCEA neither admits nor denies liability in connection with this matter, SCEA has agreed to settle the dispute with the Federal Trade Commission by offering either cash back (or credit on your PSN account) or merchandise to customers who purchased a PlayStation Vita before June 1, 2012, and who have not returned the product for a full refund.

Accordingly, if you qualify as an Eligible Purchaser and properly submit the required form and provide certain information and materials, you will be entitled to receive a check for \$25 (or a \$25 credit on your PSN account). Alternatively, you will be eligible to receive a merchandise voucher [or entitlement] that you can use to select from a list of merchandise, video games and/or services. The selection of merchandise, video games and/or services that are available through this offer has a retail value of \$50 or more.

Please note that PlayStation Vita owners who purchased their Vitas before June 1, 2012, and who registered their Vitas, should be receiving emails to their PSN accounts with full details about this offer. If you have received such an email, please follow the instructions in the email to claim your \$25 cash (or credit) or merchandise voucher [or entitlement].

Please also note that you may be eligible to receive either the merchandise voucher [or entitlement] or a check for \$25 (or a \$25 credit on your PSN account), but not both. For details on each offer and to make your choice of the \$25 check (or credit) or the merchandise voucher [or entitlement], please complete and submit the form below.

Decision and Order

You MUST complete, sign and return the below form, and provide the requested materials and information, by [Insert date equal to 90 days from service of this order] to be eligible to receive your \$25 check (or \$25 credit on your PSN account) or merchandise voucher [or entitlement] with a retail value of \$50 or more. Please be assured that your acceptance of this offer does not obligate you to purchase anything.

For more information on our settlement with the Federal Trade Commission, please visit www.ftc.gov and search for "Sony Computer Entertainment America."

If you have any questions, please call Sony Computer Entertainment America claims administration at 1-800-xxx-xxxx.

**COMPLETE, PRINT OUT, AND RETURN
THIS FORM WITH ALL REQUIRED MATERIALS**

As part of the process to qualify the recipient of this form as an Eligible Purchaser of a PlayStation Vita purchased before June 1, 2012, I have read the below, certify that the information and accompanying materials are true and accurate, agree to the provisions, and confirm my selection of consumer redress.

Check next to each of the below if it is true and accurate:

I certify that I purchased a PlayStation Vita before June 1, 2012. _____

I certify that I have not returned my PlayStation Vita for a full refund. _____

I certify that I have neither already redeemed this offer, nor made any other consumer redress request for the PlayStation Vita from Sony Computer Entertainment America _____

Required information:

Name: _____

Home Address: _____

Decision and Order

To help facilitate the administration of your form, and ensure that Eligible Purchasers meet the qualifications, please provide EITHER the SIRIS number _____ OR the SERIAL number _____ of the PlayStation Vita that you purchased before June 1, 2012. (The SIRIS number and the SERIAL number are found on the bottom edge of your PlayStation Vita product. The SIRIS number is left of the connector port and the SERIAL number is right of the connector port. These numbers are also on the side panel of the PlayStation Vita package, which you may submit in lieu of writing them on this form.)

Required materials:

Please supply ONE of the following:

(i) a store receipt showing purchase of the PlayStation Vita before June 1, 2012;

OR

(ii) a side panel of the PlayStation Vita package that shows the UPC code, SERIAL or SIRIS numbers;

OR

(iii) other information and materials that reasonably prove that you are an Eligible Purchaser of the PlayStation Vita before June 1, 2012.

Optional Information:

My PSN ID is _____ (Your PSN ID is the email address that you used and provided when you opened a PSN account.)

Selection of Consumer Redress Offer:

Decision and Order

Please select ONE of the following three Consumer Redress Offers by circling or checking ONLY ONE offer. Additional information describing each offer is available by clicking [here](#) [pop-up window or link].

1. _____ I select a \$25 check. Please send the check to me at the mailing address noted on this form.

OR

2. _____ Instead of the \$25 check, I select a \$25 credit to be applied to my PSN account. Additional information describing this offer is available by clicking [here](#) [pop-up window or link].

OR

3. _____ I select the Merchandise Voucher [or Entitlement] good for \$50 or more in value of merchandise, video games and/or services. Additional information describing this offer is available by clicking [here](#) [pop-up window or link].

I understand that by submitting the request and accepting a refund of cash (or credit) or merchandise voucher [or entitlement] issued through this program, I agree to waive any present or future claims I may have against Sony Computer Entertainment America LLC in connection with the advertising, labeling, promotion, offering for sale or sale of the PlayStation Vita for which I received consumer redress.

Decision and Order

To Submit Your Request and Agree to the Above
**COMPLETE, PRINT OUT, AND MAIL THIS FORM TO
ADDRESS BELOW.
MAKE SURE YOU INCLUDE ALL REQUIRED
MATERIALS:**

Claims Administration
Sony Computer Entertainment America LLC
[address]

(Print Name)

(Signature)

(Date)

Analysis to Aid Public Comment

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing consent order from Sony Computer Entertainment America LLC (“SCEA” or “respondent”). The proposed consent order has been placed on the public record for thirty (30) days for receipt 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 and take appropriate action or make final the agreement’s proposed order.

This matter involves respondent’s advertising of the PlayStation Vita (“PS Vita”), a gaming console. Respondent first offered the PS Vita for sale in the United States on February 22, 2012, for approximately \$250. The PS Vita is part of respondent’s line of game consoles, including the PlayStation 3 video game console (“PS3”), which allows consumers to play video games on their television sets. Unlike the PS3, the PS Vita is a handheld, portable game console that allows consumers to play games away from their television sets. In addition to selling game consoles, respondent is one of the many game developers writing game titles for use on its PS3 and PS Vita game consoles. At the time the PS Vita was launched, “MLB 12: The Show,” and “Killzone 3,” were popular SCEA game titles for the PS3.

According to the complaint, respondent advertised several notable features of the PS Vita. First, respondent promoted the “remote play” feature of the PS Vita as a way that consumers could access games already residing on their PS3 consoles and play them remotely on the PS Vita anywhere with a Wi-Fi connection. Second, advertisements represented that, with the “cross platform gaming” or “cross save” feature, consumers could begin playing a game on a PS3 console, save their progress at any point in the game, and then continue that game where they left off on the PS Vita. Third, with the “3G version” the PS Vita, available for an extra \$50 and monthly fees, advertisements represented that consumers could access a 3G network to play games live with others (“multiplayer gaming”). The complaint

Analysis to Aid Public Comment

alleges that respondent's advertising of these features was false or misleading and thus violates the FTC Act.

With respect to the remote play feature, the FTC's complaint alleges that respondent misrepresented that, with this feature, PS Vita users can easily access their PS3 games on the PS Vita. According to the complaint, PS Vita users could not easily access their PS3 games on the PS Vita. Indeed, most PS3 games are not remote playable on the PS Vita, and respondent did not specifically design the PS3 system to support remote play functionality. In addition, the complaint alleges as false or misleading respondent's claim that PS Vita users can, with remote play, easily access Killzone 3 and other similar, data-rich PS3 games. Respondent never enabled remote play on its Killzone 3 title, and very few, if any, data-rich PS3 games of similar size and complexity to Killzone 3 were remote play compatible on the PS Vita.

The complaint also alleges that the respondent made false or misleading claims about the cross save feature of the PS Vita. Contrary to respondent's advertisements, PS Vita users are not able to pause any PS3 game they are playing on their PS3 consoles at any point in the game, and continue to play that game where they left off on the PS Vita. The complaint states that this feature is available only for a limited number of PS3 game titles, and that the pause and save feature varies significantly by game. For example, with respect to "MLB 12: The Show," consumers are able to pause and save the game to the PS Vita only after they have finished the entire baseball game (all nine innings) on the PS3. The complaint also alleges that with respect to this feature, respondent failed to disclose that, with games such as MLB 12: The Show, consumers would have to own two versions of the same game, one for the PS3 and one for the PS Vita, to use this feature.

Finally, the complaint addresses advertising claims made for features relating to the 3G version of the PS Vita. Specifically, the complaint alleges as false or misleading the representation that PS Vita users who own the 3G version are able to engage in live, multiplayer gaming through a 3G network. According to the complaint, PS Vita users are restricted to

Analysis to Aid Public Comment

asynchronous or “turn-based” multiplayer gaming with the 3G version of the PS Vita.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future, as well as a provision to redress certain consumers. Part I of the order prohibits respondent from misrepresenting any material gaming feature or capability of any Handheld Game Console Product, when used as a standalone device to play video games.

Part II of the proposed order prohibits respondent from making any representation about the material capability of any Handheld or Home Game Console Product to interact with, or connect to, any other Handheld Game Console Product during gaming, unless at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

Part III of the proposed order prohibits respondent from making any representation about the material capability of any Handheld or Home Game Console Product to interact with, or connect to, any other Handheld or Home Game Console Product during gaming, unless it discloses, clearly and prominently, and in close proximity to the representation, that consumers must purchase two versions of the same video game, one for each console, if such is the case.

Part IV of the proposed order provides for consumer redress to “eligible purchasers” of the PS Vita. The proposed order defines “eligible purchasers” as consumers who purchased the PS Vita before June 1, 2012, and did not return it for a full refund. SCEA will offer these consumers \$25 dollars in cash or credit or the alternative of a voucher (or other entitlement) for merchandise, video games, and/or services with a retail value of \$50 or more.

Part V of the proposed order contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

Parts VI through VIII of the proposed order require the company to: deliver a copy of the order to certain personnel

Analysis to Aid Public Comment

having managerial responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part IX of the proposed order 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 complaint or proposed order, or to modify the proposed order's terms in any way.

Complaint

IN THE MATTER OF

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

Docket No. C-4515; File No. 122 3252
Complaint, March 24, 2015 – Decision, March 24, 2015

This consent order resolves concerns that respondent Deutsch LA, Inc. (“Respondent”) falsely advertised certain capabilities of Sony’s PlayStation “PS Vita.” The PS Vita is part of Sony’s line of game consoles, including the PlayStation 3 video console (PS3), which allows consumers the flexibility to play video games on, or away from, their television sets. The complaint alleges that Respondent, as Sony’s advertising agency, falsely advertised that PS3 users could save their progress in a game and pick up where they left off on the PS Vita. Respondent also falsely represented that consumers could access a 3G network to play games live with others, for a monthly fee. The consent order bars Respondent from engaging in similar acts or practices in the future.

Participants

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

For the *Respondent*: *Stuart Friederl, C. Andrew Keisner, and Ronald Urbach, Davis & Gilbert, LLP; and Jeffrey A. Greenbaum, Frankfurt Kurnit Klein & Selz, PC.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Deutsch LA, 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:

1. Respondent Deutsch LA, Inc., is a California corporation with its principal office or place of business at 5454 Beethoven Street, Los Angeles, CA 90066.
2. Respondent, at all times relevant to this complaint, was an advertising agency of Sony Computer Entertainment America LLC (“SCEA”), and prepared and disseminated advertisements to promote the sale of the PlayStation Vita (“PS Vita”). The PS Vita