

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

COMPUSA INC.,
a corporation

FILE NO. 022-3278

AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of CompUSA Inc., a corporation (“proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between CompUSA Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent CompUSA Inc. (“CompUSA”) is a Delaware corporation with its principal office or place of business at 14951 N. Dallas Pkwy., Dallas, TX 75240.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent's address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

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

1. Unless otherwise specified, "respondent" shall mean CompUSA Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
2. "Rebate" shall mean check, cash, credit towards future purchases, or any other consideration offered to consumers who purchase products or services, and which is to be provided subsequent to the purchase.
3. "Receiving a properly completed request" shall mean the time at which the respondent receives from the rebate applicant all documentation, information and other materials required by the express terms of the rebate offer and in compliance with such terms.
4. "CompUSA Rebate" shall mean any consumer rebate that is designed and intended to be funded by CompUSA.

5. “Manufacturer Rebate” shall mean any consumer rebate that is designed and intended to be funded by a manufacturer or third party other than CompUSA.
6. “QPS Rebate” shall mean any rebate offered by QPS to consumers.
7. “Eligible QPS purchaser” shall mean each consumer:
 - a. who has provided all documentation, information, and other materials necessary to qualify that consumer for a QPS Rebate under the terms of any QPS Rebate offer and in compliance with such terms; and
 - b. whose QPS Rebate is due or past due as of the date of service of this order.
8. “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. make any representation, in any manner, expressly or by implication, about the time in which any CompUSA Rebate will be mailed, or otherwise provided to qualifying consumers unless, at the time the representation is made, it possesses and relies upon competent and reliable evidence that substantiates the representation;
- B. fail to provide any CompUSA 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 CompUSA Rebate program.

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 make any representation, in any manner, expressly or by implication, about the availability of any Manufacturer Rebate unless:

- A. Respondent has an established record with the manufacturer demonstrating that the manufacturer has consistently paid rebates in a timely manner; or
- B. If Respondent does not have such an established record with the manufacturer, it has conducted a reasonable financial analysis of the manufacturer and that financial analysis demonstrates the manufacturer's ability to timely pay the rebates being offered.

III.

IT IS FURTHER ORDERED that respondent CompUSA, and its successors and assigns, shall, in accordance with this Part, provide a rebate to each eligible QPS purchaser who purchased products through CompUSA.

- 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 QPS 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, the rebate amount(s) owed to each such eligible QPS purchaser whose name appears on the list or database required by sub part A of this Part.
- C. 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 eligible QPS purchaser who has not been provided a rebate pursuant to sub part B 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 and confirms that no payment has yet been made to such person.
- D. No information other than a rebate check shall be mailed to each such eligible QPS purchaser. The envelope that contains the rebate check shall contain in the upper left hand corner the following return address: CompUSA Rebate Center, P.O. Box 1974, Addison, Texas 75001-1974.
- E. 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;
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 C 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 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 requesting a rebate.

IV.

IT IS FURTHER ORDERED that respondent CompUSA, 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. Specimen copies of all freestanding newspaper inserts, direct mail advertisements, newspaper advertisements, and all television, video, and radio advertisements containing the representation;
- B. A specimen copy of all rebate forms containing the representation;
- C. All materials that were relied upon in disseminating the representation; and
- D. All written or electronic complaints relating to rebates (whether received directly, indirectly or through any third party) and any responses to those complaints.

V.

IT IS FURTHER ORDERED that respondent CompUSA, 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 current personnel within thirty (30) days after the date of service of this order, and, for a period of three (3) years from the date of service of this order, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent CompUSA, and its successors and assigns, shall deliver a copy of this order to all current and future manufacturers who offer or will offer a Manufacturer Rebate that consumers can obtain by purchasing products exclusively from CompUSA. Respondent shall deliver this order to such current manufacturers within thirty (30) days after the date of service of this order, and to such future manufacturers within thirty (30) days after the manufacturer enters into a business relationship with respondent.

VII.

IT IS FURTHER ORDERED that respondent CompUSA, 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.

VIII.

IT IS FURTHER ORDERED that respondent CompUSA, 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.

IX.

This order will terminate twenty (20) years from the date of its issuance, 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.

Signed this _____ day of _____, 2004

CompUSA Inc.

By: _____
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