

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

_____	)	
	)	
In the Matter of	)	FILE NO. 992-3263
	)	
SHARP ELECTRONICS CORP.,	)	AGREEMENT CONTAINING
a corporation.	)	CONSENT ORDER.
	)	
_____	)	

The Federal Trade Commission has conducted an investigation of certain acts and practices of Sharp Electronics Corporation, 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 Sharp Electronics Corporation, by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Respondent Sharp Electronics Corporation ("Sharp"), is a New York corporation with its principal office or place of business at Sharp Plaza, Mahwah, New Jersey 07430-2135.
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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1)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 by any means specified in Section 4.4 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 the purposes of this order, the following definitions shall apply:

1. Unless otherwise specified, "Respondent" shall mean Sharp Electronics Corporation, its successors and assigns and its officers, agents, representatives and employees.
2. "Eligible Person" shall mean each consumer who purchased a Mobilon 4100, 4500, or 4600 handheld PC in the United States or in a territory of the United States.
3. "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, partnership, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the "Mobilon HPC," any other hand-held personal computer, notebook computer, personal digital assistant, portable personal computer, desktop personal computer, or any component of any such product, in or affecting commerce, shall not misrepresent the availability of any upgrade product.

II.

- A. Within five (5) business days of the date of service on respondent of this order, and for seventy-five (75) days from the date of service of this order, respondent shall publish notice of this redress provision on the main page of respondent's Web site and the main page of respondent's Mobilon Web site. This notice shall be in the form set out in Appendix A. On its Web site, respondent shall provide a means by which eligible persons can submit electronically the information that the form requests. Respondent may publish the notice required by this Part through the use of a hyperlink. Any such hyperlink must be labeled: "Important Mobilon Upgrade Offer. Click Here."
- B. Within ten (10) days of the date of service on respondent of this order, respondent shall compile a mailing list containing the name and last known address of each Eligible Person. Respondent shall compile the list from all customer service records under its control, including, but not limited to, registration cards, telephone logs, electronic mail logs, and written correspondence. 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.
- C. Within fifteen (15) days of the date of service of this order, respondent shall send via first-class mail, postage prepaid, a notice in the form set forth in Appendix B to this order, to each Eligible Person whose name appears on the list required by Part II.B. Respondent shall send the items set forth in Appendix B via electronic mail to any purchaser for whom respondent has only an electronic mail address. No information other than that contained in Appendix B shall be included. No additional materials, other than a postage pre-paid envelope for return of the offer form, shall be transmitted therewith.
- D. The envelope containing the items set forth in Appendix B shall be in the form set forth in Appendix C to this order. In the case of a 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 Appendix B to the corrected address.

- E. For a period of seventy-five (75) days from the date of service of this order, respondent shall comply with the procedures set out in Part II.C of this order with regard to each Eligible Person who contacts respondent or the Commission in any manner. Each mailing shall be made within fifteen (15) days after respondent receives such person's name and address.
- F. Any Eligible Person who, within seventy-five (75) days of the date of service of this order, returns to respondent both: 1) the form contained in Appendix A or Appendix B; and 2) payment in the amount of ten (10) dollars, will be eligible to receive a Callisto Handheld PC upgrade ("Upgrade"), more specifically described on Appendix A. Respondent will not be required to honor any request that is postmarked or emailed after the seventy-fifth day.
- G. Within ninety (90) days of the date of service of this order, respondent shall acquire a sufficient inventory of the Upgrade to meet reasonably expected demand.
- H. Respondent shall send by common carrier, delivery charges prepaid, the Upgrade and instructions for installation to each Eligible Person who complies with Part II.F, as soon as possible, but in the event of lack of inventory, within ninety (90) days of receipt of the request pursuant to Part II.F.
- I. For a period of one hundred twenty (120) days from 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 and provide information relating to this Upgrade offer.
- J. Within two hundred forty (240) days of the date of service of this order, respondent shall furnish to Commission staff the following:
  - 1. A list of the names and addresses of all purchasers who obtain an Upgrade pursuant to this order; a copy of the records used to identify these purchasers; and the mailing date of every Upgrade sent. Respondent shall provide this information and material to Commission staff in computer readable form and in computer print out form, if available;
  - 2. Copies of all notices returned to respondent as undeliverable (previously described in Parts II.D of this order); and

3. All other documents and records evidencing efforts made and actions taken by respondent to identify, locate, contact and provide Upgrades to consumers.

### III.

IT IS FURTHER ORDERED that respondent, 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. 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.

### IV.

IT IS FURTHER ORDERED that respondent, and its successors and assigns, shall, for a period of three (3) years from the date of service of this order, deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, 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 future personnel within thirty (30) days after the person assumes such position or responsibilities.

### V.

IT IS FURTHER ORDERED that respondent, 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, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent, 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.

VII.

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:

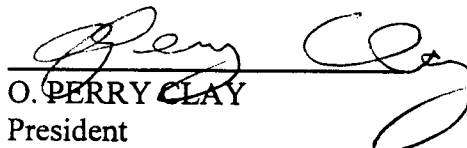
- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

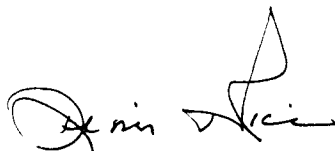
Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never 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 9<sup>th</sup> day of NOVEMBER, 2000.

SHARP ELECTRONICS CORP.

By:

  
O. PERRY CLAY  
President



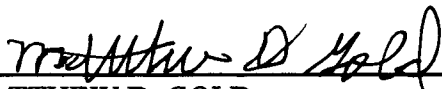
---

DENIS T. RICE  
Howard, Rice, Nemerovski, Canady, Falk & Rabkin, P.C.  
Three Embarcadero Center, 7th Floor  
San Francisco, California 94111  
Counsel for Respondent



---

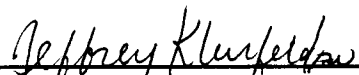
KERRY O'BRIEN



---

MATTHEW D. GOLD  
Counsel for the Federal Trade Commission

APPROVED:



---

JEFFREY KLURFELD  
Regional Director  
Western Region

## APPENDIX A

[Web Site Notice]

### **NOTICE TO PURCHASERS OF MOBILON 4100, 4500, AND 4600 HANDHELD PCS:**

IF YOU PURCHASED A SHARP MOBILON 4100, 4500, OR 4600 HANDHELD PC, YOU ARE ENTITLED TO RECEIVE A CALLISTO HANDHELD PC UPGRADE THAT INCORPORATES THE MICROSOFT WINDOWS CE 2.11 OPERATING SYSTEM WITH THE PAYMENT OF A \$10.00 SHIPPING AND HANDLING FEE.

When we marketed the Mobilon handheld PC, we advertised in the specifications of the Mobilon that the product was "upgradeable." When Sharp later developed the production and support cost applicable to upgrades, it found that the cost to the consumer of such upgrades would be too great to warrant completion of an actual upgrade. We believe in good faith that the cost would make the demand by our Mobilon customers for such an upgrade inconsequential. While Sharp believes that this determination was appropriate, customer satisfaction is our highest priority and, to this end, we have reached a settlement with the FTC under which purchasers of the Mobilon who would like to improve the performance of their handheld device have an opportunity to secure a handheld PC upgrade incorporating a newer version of Microsoft's Windows CE operating system. This is actually more than an upgrade, in the sense that it is an entirely different and more advanced system.

For a limited time, Sharp is offering its Mobilon customers a Callisto handheld PC upgrade that incorporates Microsoft's Windows CE operating system, Version 2.11. This upgrade kit includes several key software features and is easy to install.

To take advantage of this offer, please fill out the information on the form below and return it in an envelope addressed to Sharp Electronics Corporation [address]. If you wish to pay with a credit card, you may submit the completed form electronically through our Web site at [www.sharp-usa.com](http://www.sharp-usa.com). You may wish to make a copy of the form for your records. Upon receipt of payment and a properly completed form, Sharp will ship the new Callisto Upgrade to you as soon as possible, but no later than 90 days after your request is received. You need only pay a \$10.00 handling and shipment charge.

Please note that this offer is being made for a limited time only and that to receive an upgrade kit at this price, customers must respond with payment and a properly completed form by no later than [75 days from date of service of order]. Because of the limited availability of upgrade kits, we will not be able to extend this deadline, and we will not be offering this upgrade opportunity in the future. You should also note that this upgrade opportunity is only available to customers who purchased Mobilon 4100, 4500 and 4600 handheld PC.



Should you have any questions regarding this upgrade offer, please call 1-800- \_\_\_\_ - \_\_\_\_

SHARP ELECTRONICS CORPORATION

-----  
[Form to be Attached to Web Site Notice]

RETURN THIS FORM WITH YOUR PAYMENT:

I am the purchaser of a Sharp Mobilon \_\_\_\_\_ (fill in the correct model number 4100, 4500, or 4600) handheld PC. I understand that to participate in this offer I must have purchased my handheld PC and that I must include the serial number of my handheld PC with my order. I would like a Callisto Upgrade. Please deliver my Upgrade to the following address:

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

\_\_\_\_ My check for \$10.00 is enclosed (make checks payable to Sharp Place.com)

Mail check and completed form to the following address: [Address]

\_\_\_\_ Please charge my \_\_\_\_ Visa \_\_\_\_ MasterCard \_\_\_\_ American Express

\_\_\_\_\_  
Credit Card Number

\_\_\_\_\_  
Expiration Date (Month/Year)

CREDIT CARD HOLDER: PLEASE PROVIDE THE FOLLOWING INFORMATION:

NAME: \_\_\_\_\_

BILLING ADDRESS \_\_\_\_\_

ZIP CODE: \_\_\_\_\_ DAYTIME TELEPHONE NUMBER: \_\_\_\_\_

I hereby certify that I bought a Sharp Mobilon \_\_\_\_\_ (fill in the correct model number 4100, 4500, or 4600) . The serial number of my Mobilon is \_\_\_\_\_ .

DATED: \_\_\_\_\_, 20\_\_ .

---

Signature

## APPENDIX B

[Sharp Electronics Corporation Letterhead]

[Date]

Re: Mobilon Upgrade Offer

Dear [Customer Name]:

Our records show that during 1998, 1999 or 2000, you purchased a Sharp Mobilon handheld PC.

When we marketed the Mobilon handheld PC, we advertised in the specifications of the Mobilon that the product was "upgradeable." When Sharp later developed the production and support cost applicable to upgrades, it found that the cost to the consumer of such upgrades would be too great to warrant completion of an actual upgrade. We believe in good faith that the cost would make the demand by our Mobilon customers for such an upgrade inconsequential. While Sharp believes that this determination was appropriate, customer satisfaction is our highest priority and, to this end, we have reached a settlement with the FTC under which purchasers of the Mobilon who would like to improve the performance of their handheld device have an opportunity to secure a handheld PC upgrade incorporating a newer version of Microsoft's Windows CE operating system. This is actually more than an upgrade, in the sense that it is an entirely different and more advanced system.

For a limited time, Sharp is offering its Mobilon customers a Callisto handheld PC upgrade that incorporates Microsoft's Windows CE operating system, Version 2.11. This upgrade kit includes several key software features and is easy to install.

To take advantage of this offer, please fill out the information on the enclosed form and return it in an envelope addressed to Sharp Electronics Corporation [address]. If you wish to pay with a credit card, you may submit the form electronically through our Web site at [www.sharp-usa.com](http://www.sharp-usa.com). You may wish to make a copy of the form for your records. Upon receipt of payment and a properly completed form, Sharp will ship the new Callisto Upgrade to you as soon as possible, but no later than 90 days after your request is received. You need only pay a \$10.00 handling and shipment charge.

Please note that this offer is being made for a limited time only and that to receive an upgrade kit at this price, customers must respond with payment and a properly completed form by no later than [75 days from date of service of order]. Because of the limited availability of upgrade kits, we will not be able to extend this deadline, and we will not be offering this upgrade

opportunity in the future. You should also note that this upgrade opportunity is only available to customers who purchased Mobilon 4100, 4500 and 4600 handheld PC.

If you have any questions regarding this upgrade offer, please call our information line at 1(800)-\_\_\_\_\_. As always, we at Sharp Electronics view the satisfaction of our customers as our most important product or service. We appreciate your choosing Sharp and look forward to serving you again in the future.

Sincerely,

[Name]

-----

[Form to be Enclosed with Above Letter]

**RETURN THIS FORM WITH PAYMENT**

I am the purchaser of a Sharp Mobilon \_\_\_\_\_ (fill in the correct model number 4100, 4500, or 4600) handheld PC. I understand that to participate in this offer I must have purchased my handheld PC and that I must include the serial number of my handheld PC with my order. I would like a Callisto Upgrade. Please deliver my Upgrade to the following address:

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY AND STATE: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_

My check for \$10.00 is enclosed (make checks payable to Sharp Place.com)

Please charge my  Visa  Master Card  American Express

\_\_\_\_\_  
Credit Card Number

\_\_\_\_\_  
Expiration Date (Month/Year)

CREDIT CARD HOLDER: PLEASE PROVIDE THE FOLLOWING INFORMATION:

NAME: \_\_\_\_\_

BILLING ADDRESS: \_\_\_\_\_

ZIP CODE: \_\_\_\_\_ DAYTIME TELEPHONE NUMBER: \_\_\_\_\_

I am the purchaser of a Sharp Mobilon \_\_\_\_\_ (fill in the correct model number 4100, 4500, or 4600). The serial number of my Mobilon is \_\_\_\_\_.

DATED: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature

**Appendix C**

Sharp Electronics Corporation  
[address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[ADDRESS]

**ATTENTION: IMPORTANT UPGRADE OFFER FOR YOUR SHARP  
MOBILON HANDHELD PC**