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DISTRICT COURT
DISTRICT OF MARYLAND

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DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

COMPUTERS BY US, INC. also d/b/a FENCEWAY
COMPUTERS and TWECKABLE COMPUTERS,
4071 Pinchtown Road, Thomasville, PA;

JEFFREY M. WESKO, individually and as an officer of
COMPUTERS BY US, INC. and d/b/a FENCEWAY
COMPUTERS and TWECKABLE COMPUTERS,
51 Aven Way, Nottingham, Baltimore County, MD 21236;

WANDA M. WESKO, individually and as an officer of
COMPUTERS BY US, INC. and d/b/a FENCEWAY
COMPUTERS and TWECKABLE COMPUTERS,
51 Aven Way, Nottingham, Baltimore County, MD 21236;

RICHARD A. WESKO, Jr., individually and as an owner of
COMPUTERS BY US, INC. and d/b/a FENCEWAY
COMPUTERS, 12817 Cunninghill Cove, Middle River,
Baltimore County, MD, 21220,

Defendants.

Civil Action No.

**COMPLAINT FOR
AND INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission") pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint

alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 9, 13(b), 16(a) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 49, 53(b), 56(a) and 57b, to obtain consumer redress, injunctive and other equitable relief for defendants' violations of the Commission's Trade Regulation Rule, the "Mail or Telephone Order Merchandise Rule" (the "Rule"), 16 C.F.R. Part 435, and injunctive relief and consumer redress and other equitable relief for violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a) and 1345, and 15 U.S.C. § 53(b).

3. Venue in the United States District Court for the District of Maryland is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Computers By Us, Inc. is a Pennsylvania corporation with a registration address of 4071 Pinchtown Road, Thomasville, PA. Computers By Us, Inc. has done business in the District of Maryland. Computers By Us, Inc. has also done business as Fenceway Computers and Tweekable Computers.

5. Defendants Jeffrey M. Wesko and Wanda M. Wesko are husband and wife. They reside at 51 Aven Way, Nottingham, Maryland, in the District of Maryland. Jeffrey Wesko is the CEO of Computers By Us, Inc.; and Wanda Wesko is the Vice President of Computers By Us, Inc. Since the fall of 1998, they have formulated, directed, controlled, or participated in acts and practices alleged

in this complaint. Jeffrey Wesko and Wanda Wesko have also done business as Fenceway Computers and Tweekable Computers.

6. Defendant Richard A. Wesko, Jr., is defendant Jeffrey Wesko's brother. He resides at 12817 Cunningham Hill Cove, Middle River, Maryland, in the District of Maryland. Since the fall of 1998, he has formulated, directed, controlled, or participated in acts and practices alleged in this complaint. Richard A. Wesko, Jr. has also done business as Fenceway Computers.

COMMERCE

7. At all times material to this complaint, the defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

8. Since at least 1998, the defendants have offered computers for sale individually, and through their companies and doing business as, Computers By Us, Inc., Fenceway Computers, and Tweekable Computers on the Internet at "auction house" web sites.

9. An Internet auction house is an online forum that facilitates communications between would-be buyers and sellers of goods and services. Sellers use the auction house's web site to advertise the goods and services they seek to sell. Auctions are conducted on the auction house's web site with would-be buyers sending bids through electronic mail to the web site. At the conclusion of the auction, buyers and sellers typically communicate with each other via electronic mail about the terms of payment and delivery and then complete their commercial transactions through the U.S. mail system.

10. The defendants have placed advertisements offering computers for sale on various Internet auction house web sites. In response, consumers have placed bids on the Internet auction houses' web sites for the defendants' merchandise.
11. The defendants have routinely communicated via electronic mail with those consumers who have "successfully" bid for goods the defendants offered for sale at auction house web sites.
12. After the defendants have accepted payment from consumers who "successfully" bid for the goods the defendants offered for sale at auction house web sites, in numerous instances, the defendants have failed to deliver the merchandise within the stated delivery time or within thirty (30) days when no delivery date was stated.
13. In numerous instances the defendants have failed to deliver the goods to purchasers who paid for goods purchased at auction house web sites.
14. In numerous instances, the defendants have failed to notify consumers that delivery of the goods would be delayed and have failed to offer consumers a choice between accepting a later delivery date or receiving a refund.
15. In numerous instances, the defendants have failed to provide refunds to consumers who paid for and did not receive goods ordered from auction house web sites.
16. In numerous instances the Weskos have communicated via electronic mail with consumers who visit the Internet auction houses' web sites to encourage the consumers to visit the defendants' own web sites, including www.computersbyus.com and www.fenceway.com.
17. The defendants have used their web sites to advertise for sale additional merchandise including computers, computer accessories and other parts to "upgrade" the computers that the

defendants have offered for sale at the Internet auction houses. In numerous instances, consumers who "successfully" bid on merchandise offered by the defendants at auction house web sites have also ordered merchandise offered on the defendants' web sites, and the defendants have accepted payment for such merchandise.

18. In numerous instances, after accepting payment from consumers, the defendants have failed to deliver merchandise purchased from their web sites within the stated delivery time or within thirty (30) days when no delivery time was stated.

19. In numerous instances, the defendants have frequently failed to deliver any merchandise after consumers had tendered payment for merchandise ordered from the defendants' web sites.

20. In numerous instances, the defendants have failed to notify consumers that delivery of merchandise ordered from the defendants' web sites would be delayed and failed to offer consumers a choice between accepting a later delivery date or receiving a refund.

21. In numerous instances, the defendants have failed to provide refunds to consumers who paid for and did not receive goods ordered from the defendants' web sites.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

22. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

COUNT I

23. In the course of offering computers for sale via Internet auction houses, in numerous instances the defendants have represented, expressly or by implication, that the consumers who offer the highest bids and send the defendants the agreed-upon payment for the computers pursuant to

those bids, will receive the promised computers.

24. In truth and in fact, in numerous instances, the consumers who offered the highest bids and sent the agreed-upon payment for the computers, pursuant to those bids, have not received the promised computers.

25. Therefore, the defendants' express or implied representations described in Paragraph 23 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

26. In numerous instances, the defendants, in offering computers and computer accessories for sale via their web sites, represented, expressly or by implication, that the consumers who send the defendants the agreed-upon payment, will receive the promised merchandise.

27. In truth and in fact, in numerous instances, the consumers who ordered computers or computer accessories from the defendants' web sites and sent the agreed-upon payment to the defendants have not received the promised computers or computer accessories.

28. Therefore, the defendants' express or implied representations described in Paragraph 26 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

THE MAIL OR TELEPHONE ORDER MERCHANDISE RULE

29. The FTC promulgated the Mail or Telephone Order Merchandise Rule ("Rule"), 16 C.F.R. Part 435, on October 22, 1975, and revised the Rule on September 21, 1993. The revised Rule became effective on March 1, 1994, and has remained in full force and effect since that time.

30. The Rule applies to sales in which the buyer has ordered merchandise from the seller by mail or directly or indirectly by telephone, such as by fax machines and computers. 16 C.F.R. §§ 435.1 and 435.2(a) and (b).

31. The Rule prohibits a seller from soliciting any order for the sale of merchandise to be ordered by the buyer through the mail or telephone, unless, at the time of the solicitation, the seller has a reasonable basis to expect that it will be able to ship any ordered merchandise to the buyer within the time stated on the solicitation, or, if no time is stated, within thirty days of the completion of the order. 16 C.F.R. § 435.1(a)(1).

32. The Rule requires that the seller follow certain procedures if merchandise ordered through the mail or by telephone will not be shipped within the applicable time limit. Specifically, the Rule requires that, when there is a shipping delay, the seller must, prior to the expiration of the applicable time, offer the buyer an option either to agree to the delay or to cancel the order and receive a prompt refund (as "prompt refund" is defined in 16 C.F.R. § 435.2(f)). 16 C.F.R. § 435.1(b)(1).

33. The Rule also requires that a seller deem an order canceled and make a prompt refund to the buyer whenever the seller has failed to ship within the specified time period and has failed to offer the consumer the option to consent to further delay or to cancel the order. 16 C.F.R. § 435.1(c).

34. Pursuant to Section 18(f)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and 16 C.F.R. § 435.1, violations of the Rule constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**DEFENDANTS' VIOLATIONS OF THE MAIL OR TELEPHONE ORDER
MERCHANDISE RULE**

COUNT III

35. In numerous instances, the defendants have solicited orders for the sale of merchandise to be ordered by the buyer indirectly through the telephone without a reasonable basis to expect that they would be able to ship any ordered merchandise to the buyer within the time stated in the solicitation, or, if no time was clearly and conspicuously stated, within thirty days of receipt of a properly completed order, thereby violating 16 C.F.R. § 435.1(a)(1).

COUNT IV

36. In numerous instances, after soliciting orders for the sale of merchandise ordered by the buyer indirectly through the telephone and being unable to ship merchandise within the applicable time as set out in Section 435.1(a)(1) of the Rule, the defendants violated the Rule by failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, thereby violating 16 C.F.R. § 435.1(b)(1).

COUNT V

37. In numerous instances, the defendants have failed to make a "prompt refund," as that term is defined in 16 C.F.R. § 435.2(f), to buyers when such refunds were required by Section 435.1(c) of the Rule, thereby violating 16 C.F.R. § 435.1(c).

CONSUMER INJURY

38. Consumers in many areas of the United States have suffered substantial monetary loss as a result of the defendants' unlawful acts or practices. These consumers have each paid amounts of up to \$1,660 to the defendants for computers or computer accessories that the consumers have never received. Absent injunctive and ancillary equitable relief by this Court, the defendants are likely to continue to violate the Act and the Rule and to injure consumers and harm the public interest.

CONSUMER REDRESS AND INJUNCTION

39. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes the Court to award such relief as is necessary to redress the injury to consumers or others resulting from the defendants' violation of the Rule.

40. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against the defendants' violating the FTC Act, as well as such ancillary relief as redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

41. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by the defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b and pursuant to its own equitable powers:

1. Enter judgment against the defendants and in favor of plaintiff for each violation alleged in this complaint;

2. Permanently enjoin the defendants from violating the FTC Act and the Mail or Telephone Order Merchandise Rule as alleged herein;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from the defendants' violations of the FTC Act and the Mail or Telephone Order Merchandise Rule, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies;

4. Award plaintiff the costs of bringing this action; and

5. Award plaintiff such additional relief as the Court may deem just and proper.

Dated: October ____, 2000

OF COUNSEL:

EILEEN HARRINGTON
Associate Director
Division of Marketing Practices

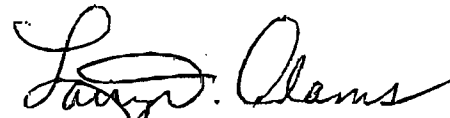
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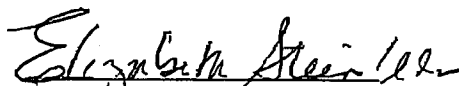
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