

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

_____)	
In the Matter of)	DOCKET NO. C-3977
)	
OFFICE DEPOT, INC.,)	
a corporation.)	DECISION AND ORDER
)	
_____)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, and having duly considered the comments received, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Office Depot, Inc., is a Delaware corporation with its principal office or place

of business at 2200 Old Germantown Road, Delray Beach, Florida 33445.

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. "Rebate" shall mean cash, instant savings, instant credit, credit towards future purchases, merchandise, services, or any other consideration offered to consumers who purchase products or services from respondent, which is provided at the time of purchase, or subsequent to the purchase.
2. Unless otherwise specified, "respondent" shall mean Office Depot, Inc., a corporation, its successors and assigns and its officers, agents, representatives, and employees.
3. "Clearly and conspicuously" shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. Provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it.
 - B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.
 - C. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

4. In the case of advertisements disseminated by means of an interactive electronic medium such as the Internet or online services, “in close proximity” shall mean on the same Web page, online service page, or other electronic page, and proximate to the triggering representation, and shall not include disclosures accessed or displayed through hyperlinks, pop-ups, interstitials or other means.

5. "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 labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, or by depiction, the price or cost to consumers of such product or service, or what is included in the price or cost of any such product or service.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any computer, computer-related product or Internet access service, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of any such computer, computer-related product or Internet access service when that price, cost, or any rebate is conditioned upon the purchase of any other product or service, unless it discloses clearly and conspicuously, and in close proximity to the representation that consumers must purchase the other product or service in order to obtain the represented price or rebate and the cost of the other product or service, including if a service, the length of time that consumers are required to purchase the service.

Provided, that for purposes of this Part, use of the term “rebate” or “discount,” without any description or characterization of either term shall not, in and of itself, be deemed a representation about the price or cost to consumers of a product or service.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution of any Internet access service; or any computer or computer-related product for which the price, cost or any rebate is conditioned upon the purchase of Internet access service; in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the price or cost to consumers of such Internet access service, unless it discloses, clearly and conspicuously:

- A. the dollar amounts of any and all fees, charges, rebate repayments, and other costs consumers are required to pay to cancel the Internet access service; and
- B. (1) that consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone service charges to access the Internet service, if that is the case; and (2) a means for each consumer to ascertain whether he or she would incur such costs or charges to access the Internet service and the amount of any such costs or charges. Provided that respondent may comply with Part III.B.(2), above, by disclosing a means by which consumers may obtain information from the Internet service provider about available access phone numbers and the amount of any hourly surcharges or other costs to access the Internet service; and by advising consumers to contact their local telephone company to determine whether using the access telephone number closest to them will incur charges in excess of local service charges.

IV.

IT IS FURTHER ORDERED that respondent Office Depot, Inc., 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 their 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.

V.

IT IS FURTHER ORDERED that respondent Office Depot, Inc., 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 having responsibilities 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 to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

IT IS FURTHER ORDERED that respondent Office Depot, Inc., 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.

VII.

IT IS FURTHER ORDERED that respondent Office Depot, Inc., and its successors and assigns shall, within sixty (60) days after 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 they have complied with this order.

VIII.

This order will terminate on September 5, 2020, 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.

Donald S. Clark
Secretary

ISSUED: September 5, 2000

SEAL