

IN THE MATTER OF

THE DOW CHEMICAL COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3785. Complaint, Feb. 20, 1998--Decision, Feb. 20, 1998

This consent order requires, among other things, the Michigan-based chemical company to divest, simultaneously with its acquisition of Sentrachem, Limited, a South African chemical company, the Hampshire Chemical Company's chelant business to Akzo Nobel N.V., which imports small volumes of chelants into the United States.

Appearances

For the Commission: *Morris Bloom, Joseph Krauss, Howard Morse and William Baer.*

For the respondent: *Robert Schlossberg and Peter Halle, Morgan, Lewis & Bockius, Washington, D.C. and Scott R. Pennock, in-house counsel, Midland, MI.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that the Dow Chemical Company's proposed acquisition of the South African company, Sentrachem Limited ("Sentrachem"), including its U.S. subsidiary, Hampshire Chemical Corporation ("Hampshire"), would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows:

I. THE RESPONDENT

The Dow Chemical Company

1. Respondent Dow is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office

and principal place of business located at 2030 Dow Center, Midland, Michigan. In 1996 Dow had worldwide sales of approximately \$20 billion.

2. Dow produces chemicals, plastics, and agricultural and consumer products. Through its Chemical Division, it is the leading producer in the U.S. of aminopolycarboxylic chelating agents, also known as chelants.

3. At all times relevant herein, Dow has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44; and at all times relevant herein, Dow has been, and is now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, and Section 1 of the Clayton Act, 15 U.S.C. 12.

II. THE ACQUIRED COMPANY

4. Sentrachem, a South African company, develops, manufactures, and markets a number of different commodity and specialty chemical products. In 1996 Sentrachem had worldwide sales of approximately \$1 billion. Sentrachem competes in the U.S. chelant market through its U.S. subsidiary, Hampshire, a Delaware corporation, with its principal place of business in Lexington, Massachusetts. In 1996, Hampshire's sales were approximately \$200 million.

III. THE ACQUISITION

5. On or about August 5, 1997, Dow announced a cash tender offer to acquire all of the shares of Sentrachem for approximately \$425 million.

IV. THE RELEVANT MARKET

6. One relevant line of commerce in which to analyze the proposed acquisition is the research, development, manufacture, and sale of chelants, which are chemicals used to inactivate iron, calcium, copper, magnesium and other metal ions in water solutions. Chelants are used in cleaners, pulp and paper, water treatment, photography, agriculture, and food and pharmaceutical applications. Chelant customers use chelants because they are high quality metal ion control chemicals that are cost effective across a wide variety of applications. Chelants are an extremely small part of the customer's overall product or processing costs. Because of the time and cost associated with researching and qualifying an alternative to chelants,

customers do not reformulate away from chelants. There are no economic substitutes for chelants to which customers would switch in response to a price increase in chelants.

7. The United States is one relevant geographic area within which to analyze the likely effect of the proposed acquisition on competition in the chelant market. Chelants produced overseas are not economic substitutes for most chelants sold in the United States, particularly those diluted in water, because shipping costs are high and there are too many uncertainties and delays inherent in long distance shipping. Imports of chelants are less than 4 percent of U.S. consumption.

V. CONCENTRATION

8. Based on 1996 dollar sales, Dow and Hampshire are the two leading of only three producers of chelants in the United States, with a combined market share of over 70 percent. The U.S. chelant market is highly concentrated as measured by the Herfindahl-Hirschmann Index ("HHI"). The proposed acquisition would increase the HHI by more than 2,800 points to more than 6,100 points.

VI. ENTRY CONDITIONS

9. Entry into the chelant market would not be timely, likely, or sufficient to deter or offset the adverse effects of the proposed acquisition on competition. A new entrant would have to build both a chelant production plant and a plant to produce hydrogen cyanide ("HCN"), a key input in the production of chelants, which would take over two years and entail large fixed, and mostly sunk, costs. In addition to the time to construct these facilities, a new firm must secure the environmental permits to produce HCN, a toxic substance. In order to recoup its investment, a new entrant would need to obtain a market share at least as large as that held by any of the current domestic producers, which would be difficult because of the significant amount of chelant sales that are subject to long term supply agreements. All these factors make entry into the U.S. chelant market unlikely.

VII. EFFECT OF THE PROPOSED MERGER ON COMPETITION

10. The proposed acquisition would substantially lessen competition or tend to create a monopoly in the U.S. chelant market, because, among other things:

- a. It increases concentration substantially in a highly concentrated market;
- b. It eliminates actual, direct, and substantial, competition between Dow and Hampshire;
- c. It facilitates the unilateral exercise of market power by the merged firm; and
- d. It will likely result in increased prices for chelants.

VIII. VIOLATIONS CHARGED

11. The proposed acquisition by Dow of all the shares of Sentrachem, described in paragraph five, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

Commissioner Azcuenaga and Commissioner Thompson not participating.

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition by The Dow Chemical Company ("Dow"), through its wholly-owned subsidiary, Dow South Africa Holdings (Pty) Ltd., of the entire issued share capital of Sentrachem Limited ("Sentrachem"), which in turn owns Hampshire Chemical Corporation ("Hampshire"), and having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

The respondent, its attorneys, and counsel for the 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, 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 Acts, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Dow is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 2030 Dow Center, Midland, Michigan.

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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Commission*" means the Federal Trade Commission.

B. "*Respondent*" or "*Dow*" means The Dow Chemical Company, its directors, officers, employees, agents and representatives, its predecessors, successors, and assigns; subsidiaries, divisions, and groups and affiliates controlled by Dow, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

C. "*Sentrachem*" means Sentrachem Limited, a South African company, with its principal place of business at 5 Protea Place Sandown 2196, 2146 Sandton, Republic of South Africa.

D. "*Hampshire*" means Hampshire Chemical Corporation, a wholly-owned subsidiary of Sentrachem Limited, with its principal place of business at 55 Hayden Avenue, Lexington, Massachusetts.

E. "*Akzo*" means Akzo Nobel N.V., a company located in The Netherlands, with its principal place of business at Velperweg 76, 6800 SB Arnhem, The Netherlands, and its subsidiary Akzo Nobel Chemicals Inc.

F. "*Acquisition*" means the acquisition by Dow, through its subsidiary, Dow South Africa Holdings (Pty) Ltd., of the entire issued share capital of Sentrachem Limited.

G. "*Chelating agents*" means chemicals used to react with metal ions to form ring structures incorporating the metal ion within the molecule.

H. "*Chelant products*" means ethanoldiglycine sodium ("EDG") and diethanolglycine sodium ("DEG") and aminopolycarboxylic acids and salts, including, but not limited to, ethylenediaminetetraacetic acid ("EDTA"), diethylenetriaminepentaacetic acid ("DTPA"), hydroxyethylenediaminetriacetic acid ("HEDTA"), nitrilotriacetic acid ("NTA"), ethylenediaminetriacetic ("ED3A"), and the salts and nitrile precursors of EDTA, DTPA, HEDTA, ED3A, and any other chelating agents, but excluding propylenediaminetetraacetic acid ("PDTA").

I. "*Hampshire Chelant Products*" means all chelant products that have been, at any time in the two (2) years preceding the Acquisition, researched, developed, manufactured, distributed or sold by Hampshire in the United States or Canada, including, but not limited to, all projects in research and development by Hampshire that relate to improving existing or developing new chelant products, or improving processes for manufacturing chelant products.

J. "*Hampshire Non-Chelant Products*" means any product other than Hampshire Chelant Products, that have been, at any time in the two (2) years preceding the Acquisition, researched, developed, manufactured, distributed, or sold at the Lima Facility or Other Hampshire Facilities, including, but not limited to, all projects in research and development by Hampshire that relate to improving existing or developing new Hampshire Non-Chelant Products, or improving processes for manufacturing Hampshire Non-Chelant Products.

K. "*Hampshire Products*" means Hampshire Chelant Products and Hampshire Non-Chelant Products.

L. "*Lima Facility*" means Hampshire's Lima, Ohio manufacturing facility.

M. "*Other Hampshire Facilities*" means Hampshire's facilities located at Deer Park, Texas and Nashua, New Hampshire.

N. "*Akzo Lima Expansion*" means such improvements, additions, and expansions to the Lima Facility to produce no less than 175 million pounds per annum (on a solution pound basis) of chelant

products and to provide sufficient hydrogen cyanide ("HCN"), nitrile, and other raw material storage, chelant products warehouse space and related facilities, to enable the Hampshire Chelant Business to operate at sustained levels of output no less than 175 million pounds per annum (on a solution pound basis) of chelant products.

O. "*Akzo Lima Expansion Milestones*" means: (i) the submission by Akzo of complete applications for any and all federal, state, and local governmental permits that may be required to complete the Akzo Lima Expansion, within twelve (12) months after the date this order becomes final; (ii) the receipt by Akzo of all federal, state, or local governmental permits that are required to complete the Akzo Lima Expansion, within eighteen (18) months after the date this order becomes final; provided, however that if Akzo has not received approval or final disapproval of its permit application(s) within eighteen (18) months after the date this order becomes final, this second milestone shall be extended until Akzo receives approval or final disapproval for a period up to, but in no event longer than, twelve (12) months; (iii) the completion by Akzo of the structural steel installation required for the Akzo Lima Expansion, within twelve (12) months after permitting.

P. "*Dow's Competing Chelant Business*" means all assets, properties, business and goodwill, tangible and intangible of Dow relating to the research, development, manufacture, distribution or sale of chelant products, its employees, agents, representatives, and any other personnel assigned to such business, or to whom such persons report directly or indirectly.

Q. "*Dow's Contract Manufacturing Services*" means the Dow business unit engaged in the contract manufacture of chemical and polymer products and services for independent firms.

R. "*Hampshire Chelant Business*" means all assets, properties, business and goodwill, tangible and intangible, of Hampshire relating to the research, development and manufacture in the United States, and the distribution and sale in North America, of Hampshire Chelant Products, including, but not limited to:

1. All rights, title and interest in and to owned or leased real property at the Lima Facility (including completion of the current nitrile expansion project underway), together with its appurtenances, licenses and permits; but excluding real property at (i) the Other Hampshire Facilities; (ii) Hampshire's Lexington, Massachusetts facility; and (iii) Hampshire's Teeside, United Kingdom facility;

2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property located at the Lima Facility, but excluding machinery, fixtures, equipment, transportation facilities located at (i) the Other Hampshire Facilities; (ii) Hampshire's Lexington, Massachusetts facility; and (iii) Hampshire's Teeside, United Kingdom facility;

3. All intangible assets associated with Hampshire Chelant Products, including, but not limited to, processes, process improvements projects, production projects, permits, supporting data and documents, patents, patent applications and other intellectual property relating to any Hampshire Chelant Product;

4. All intellectual property used by Hampshire at the Lima Facility and all intellectual property used for the research, development, manufacture or sale of Hampshire Chelant Products, including, but not limited to, trade secrets, test data, technology and know-how (including, but not limited to, manufacturing know-how and application know-how), and all patents, patent applications, patent rights, licenses, registrations, submissions and approvals;

5. All books, records and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, specifications, designs, drawings, and quality control data;

6. All right, title and interest in and to contracts and agreements entered into in the ordinary course of business with customers (together with associated bid and performance bonds), joint ventures, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, including, but not limited to, Hampshire's existing contract with BP Chemicals Inc. for the supply of liquid hydrogen cyanide and the related service agreements and land lease; and all existing Hampshire contracts for railcars used in the transport of Hampshire Chelant Products;

7. All projects in research and development by Hampshire as of the date of the Acquisition that relate to improving existing chelant products, or developing chelant products, including, but not limited to, all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to, manufacturing know-how and application know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to all such projects in research and development;

8. All research materials and inventions and intellectual property used for research and development relating to Hampshire Chelant Products or processes, including, but not limited to, trade secrets, test data, technology and know-how, and all patents, patent applications, patent rights, licenses, registrations, submissions and approvals;

9. All rights under warranties and guarantees, express or implied;

10. All rights, titles and interests in registrations or other governmental approvals for manufacture and sale of any Hampshire Chelant Products or research and development efforts for Hampshire Chelant Products; and

11. All Hampshire (including Hampshire UK) brand names and trademarks for Hampshire Chelant Products worldwide, but excluding the Hampshire corporate name and any brand names or trademarks that include the full word "Hampshire."

In addition, the "Hampshire Chelant Business" shall include all intellectual property used by Hampshire in the research, development, and manufacture in the United States, and the distribution and sale worldwide, of PDTA.

S. "*Hampshire Business Unit*" means the Hampshire Chelant Business and all assets, properties, business and goodwill, tangible and intangible of Hampshire relating to the research, development and manufacture in the United States, and the distribution and sale in North America of Hampshire Products, including, but not limited to:

1. All right, title and interest in and to owned or leased real property at the Lima Facility and Other Hampshire Facilities together with its appurtenances, licenses and permits;

2. All machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property located at the Lima Facility and Other Hampshire Facilities;

3. All inventory and storage capacity;

4. All intangible assets associated with Hampshire Products, including, but not limited to, processes, process improvements projects, production projects, permits, supporting data and documents, patents, patent applications and other intellectual property relating to any Hampshire Product;

5. All intellectual property used for the research, development, manufacture or sale of Hampshire Products, including, but not limited to, trade secrets, test data, technology and know-how (including, but not limited to, manufacturing know-how and application know-how),

and all patents, patent applications, patent rights, licenses, registrations, submissions and approvals;

6. All books, records and files, customer lists, customer records and files, vendor lists, catalogs, sales promotion literature, advertising materials, specifications, designs, drawings, and quality control data;

7. All right, title and interest in and to contracts and agreements entered into in the ordinary course of business with customers (together with associated bid and performance bonds), joint ventures, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees including, but not limited to, all existing contracts with BP Chemicals Inc. for the supply of liquid hydrogen cyanide and the related service agreements and land lease; and all existing contracts for railcars used in the transport of Hampshire Products;

8. All projects in research and development as of the date of the divestiture required by this order pursuant to paragraph IV.B that relate to improving existing, or developing new, Hampshire Products, including, but not limited to, all research materials, technical information, inventions, trade secrets, intellectual property, patents, technology, know-how (including, but not limited to, manufacturing know-how and application know-how), specifications, designs, drawings, processes, quality control data, and formulas, as well as licenses thereto, relating to all such projects in research and development;

9. All research materials and inventions and intellectual property used for research and development relating to Hampshire Products, including, but not limited to, trade secrets, test data, technology and know-how, and all patents, patent applications, patent rights, licenses, registrations, submissions and approvals;

10. All rights under warranties and guarantees, express or implied;

11. All items of prepaid expense;

12. All rights, titles and interests in registrations or other governmental approvals for manufacture and sale of any Hampshire Non-Chelant Products, or research and development efforts for Hampshire Non-Chelant Products; and

13. All Hampshire (including Hampshire UK) brand names and trademarks for Hampshire Products worldwide, including the Hampshire corporate name and any brand names or trademarks that include the full word "Hampshire."

II.

It is further ordered, That:

A. Respondent shall divest, absolutely and in good faith, as an ongoing business, simultaneously with consummation of the Acquisition, the Hampshire Chelant Business to Akzo pursuant to the agreement between Dow and Akzo dated as of November 15, 1997. Provided, however, that respondent may retain (i) a non-exclusive, fully-paid and global license from Akzo to intangible assets and intellectual property used by the Hampshire Chelant Business in the research, development or manufacture of Hampshire Chelant Products to make, have made, use and sell Hampshire Non-Chelant Products; and (ii) a non-exclusive, fully-paid and global license relating to the manufacture of ED3A to make, have made, use and sell ED3A for use as a precursor for surfactants; and (iii) a non-exclusive, fully-paid, and global license to intellectual property used in the manufacture of PDTA to make, have made, use and sell PDTA in any part of the world.

B. The purpose of the divestiture of the Hampshire Chelant Business is to ensure the continuation of the Hampshire Chelant Business as an ongoing, viable business engaged in the research, development, manufacture, distribution and sale of chelant products independent of Dow, and in competition with Dow, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. On reasonable notice to respondent, respondent shall provide technical assistance and know-how to Akzo with respect to the Hampshire Chelant Business. Such technical assistance shall include, without limitation, consultation with knowledgeable employees of Hampshire and training at the manufacturing facilities of Hampshire. Respondent may charge the reasonable costs incurred in providing such technical assistance, including reimbursement (commensurate with the salary and benefits of Hampshire personnel involved) for the time plus expenses of Hampshire personnel providing the technical assistance. Hampshire shall continue to provide such technical assistance until Akzo is satisfied that it is capable of producing, and of developing for production, commercially saleable chelant products utilizing the assets of the Hampshire Chelant Business; provided, however, Hampshire shall not be required to continue providing such technical assistance and training after the earlier of (i) one (1) year

after the Akzo Lima Expansion is fully operational and released to production; or (ii) three (3) years after the date this order becomes final.

III.

It is further ordered, That:

A. Respondent shall exclusively toll manufacture for Akzo Hampshire Chelant Products at the Other Hampshire Facilities, at no more than Hampshire's historical cost as provided for in the agreement between Dow and Akzo dated as of November 15, 1997, in order to provide Akzo with sufficient time to accomplish the Akzo Lima Expansion for such period as Akzo may request, but in no event to extend beyond the earlier of (i) the date the Akzo Lima Expansion is fully operational and released to production or (ii) four (4) years after the date this order becomes final. Upon the Akzo Lima Expansion being released to production, respondent shall not manufacture at the Other Hampshire Facilities any chelant products for a period of one (1) year.

B. Dow's Contract Manufacturing Services shall (i) oversee the production of Hampshire Chelant Products at the Other Hampshire Facilities for Akzo, and (ii) administer and control the supply and allocation of HCN from Akzo at Lima, Ohio to respondent. Dow's Contract Manufacturing Services shall maintain any information arising from its obligations under paragraph III.B as confidential and not disclose such information to Dow's Competing Chelant Business. Any Dow or Hampshire employees supervised by Dow's Contract Manufacturing Services in carrying out the obligations of this paragraph III.B shall also maintain such information as confidential and not disclose such information to Dow's Competing Chelant Business.

C. Respondent shall use information relating to the Hampshire Chelant Business only to fulfill its obligations in paragraphs II.C and III.A, and shall not provide, disclose or otherwise make available to Dow's Competing Chelant Business, any information relating to Hampshire Chelant Products or the Hampshire Chelant Business, including information obtained as a result of the Acquisition, or directly or indirectly from Dow's Contract Manufacturing Services, or from respondent's operations of the Other Hampshire Facilities, and Dow shall not use any such information in Dow's Competing

Chelant Business, until respondent has fulfilled all obligations under paragraph III.A, above.

IV.

It is further ordered, That:

A. In the event that any of the Akzo Lima Expansion Milestones is not achieved, respondent shall acquire back from Akzo, within thirty (30) days, the Hampshire Chelant Business pursuant to the agreement between Dow and Akzo dated as of November 15, 1997.

B. Upon its acquisition of the Hampshire Chelant Business pursuant to paragraph IV.A, above, respondent shall divest, absolutely and in good faith, within sixty (60) days after respondent has obtained from Akzo all assets pursuant to paragraph IV.A the Hampshire Business Unit as a viable and competitive business. Provided, however, respondent may seek Commission approval to divest, in lieu of the divestiture of the Hampshire Business Unit, less than all assets of the Hampshire Business Unit and/or such other assets if such divestiture meets the purpose of paragraph IV.C, below. Respondent shall divest the Hampshire Business Unit or such other assets approved by the Commission only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. The purpose of the divestiture of the Hampshire Business Unit is to ensure the continuation of the Hampshire Chelant Business as an ongoing, viable enterprise engaged in the research, development, manufacture, distribution and sale of chelant products independent of Dow, and in competition with Dow, and to remedy the lessening of competition alleged in the Commission's complaint.

D. Respondent shall take such actions as are necessary to maintain the viability and marketability of the Hampshire Business Unit and shall not cause or permit the destruction, removal, wasting, deterioration, or impairment of the Hampshire Business Unit, except in the ordinary course of business and except for ordinary wear and tear, until the Akzo Lima Expansion Milestones are achieved, or until the divestiture required by paragraph IV.B, above.

V.

It is further ordered, That:

A. In the event that any of the Akzo Lima Expansion Milestones is not achieved, and if respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Hampshire Business Unit or such other assets approved by the Commission pursuant to paragraph IV.B within the time required by paragraph IV of this order, then the Commission may appoint a trustee to divest the Hampshire Business Unit. The trustee shall have all rights and powers necessary to permit the trustee to effect the divestiture of the Hampshire Business Unit in order to assure the viability, competitiveness, and marketability of the Hampshire Business Unit so as to expeditiously accomplish the remedial purposes of this order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute enforced by the Commission, respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act or any other statute, for any failure by respondent to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph V.A of this order, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Hampshire Business Unit in order to accomplish the divestiture required by this order.

3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission (and, in the case of a court-appointed trustee, of the court), transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture of the Hampshire Business Unit, and to divest such additional ancillary assets of Sentrachem and effect such additional arrangements, in order to assure the viability, competitiveness, and marketability of the Hampshire Business Unit so as to expeditiously accomplish the remedial purposes of this order.

4. The trustee shall have twelve (12) months to accomplish the divestiture required by this order, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court); provided, however, the Commission may extend this period for no more than two (2) additional terms.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Hampshire Business Unit, or to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by the respondent shall extend the time for divestiture under this paragraph V in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee, by the court).

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner, and to the acquirer or acquirers, as set out in paragraph IV of this order; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity, and if the Commission approves more than one such acquiring entity, then the trustee shall divest to the acquiring entity or entities

selected by respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission (and, in the case of a court-appointed trustee, by the court) of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement (based on sales price) contingent on the trustee's accomplishing the divestiture required by this order.

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, recklessness, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph V.A of this order.

10. The Commission (or, in the case of a court-appointed trustee, the court) may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Hampshire Business Unit.

12. The trustee shall report in writing to respondent and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

VI.

It is further ordered, That within thirty (30) days after the date this order becomes final, and every ninety (90) days thereafter until respondent has fully complied with the provisions of paragraphs II and III of this order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which respondent intends to comply, is complying, and has complied with paragraphs II and III of this order. Provided, however, that within ten (10) days of Akzo's failure to meet any of the Akzo Lima Expansion Milestones, and every thirty (30) days thereafter until respondent has fully complied with the provisions of paragraphs IV and V of this order, respondent shall submit to the Commission verified written reports setting forth in detail the manner and form in which respondent intends to comply, is complying, and has complied with paragraphs IV and V. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II, III, IV and V of the order, including a description of all substantive contacts or negotiations for any divestiture required under paragraph IV and the identity of all parties that have contacted respondent or that have been contacted by respondent. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in Dow that may affect compliance obligations arising out of the order.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence,

memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference, the right to interview officers, employees, or agents of respondent.

IX.

It is further ordered, That this order shall terminate on February 20, 2008.

Commissioner Azcuenaga and Commissioner Thompson not participating.

IN THE MATTER OF
SEARS, ROEBUCK AND CO.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3786. Complaint, Feb. 20, 1998--Decision, Feb. 20, 1998

This consent order prohibits, among other things, the Illinois-based retail corporation from misrepresenting that any reaffirmation agreement it obtains will be filed with the bankruptcy court, that any reaffirmation agreement is binding, or any other material fact while attempting to collect debts subject to a pending bankruptcy proceeding. In addition, the consent order prohibits the respondent from collecting debts that have been discharged in bankruptcy proceedings. The consent order also preserves the Commission's right to file an action in federal district court to seek full redress for consumers if Sears' refunds to debtors pursuant to a separate class action lawsuit settlement total less than \$100 million.

Appearances

For the Commission: *Paul Block, John Dugan and Phoebe Morse.*

For the respondent: *Stephen H. Olesky, Hale & Dorr, Boston, MA. Theodore N. Mirvis, Wachtell, Lipton, Rosen & Katz, New York, N.Y. and Ronald L. Rose, Dykema Gossett, Bloomfield Hills, MI.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Sears, Roebuck and Co., 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 Sears, Roebuck and Co. is a New York corporation with its principal office or place of business at 3333 Beverly Road, Hoffman Estates, Illinois. Respondent is engaged in, among other things, the consumer retail business. In the course and conduct of its business, respondent has regularly extended credit for the purpose of facilitating consumers' purchase of respondent's products and services (hereinafter referred to as "consumer credit accounts").

2. 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.

THE UNITED STATES BANKRUPTCY CODE

3. Under the United States Bankruptcy Code (11 U.S.C. 1-1330), a debtor may be granted a discharge in a Chapter 7 bankruptcy proceeding from debts that have arisen prior to the filing of the bankruptcy petition (hereinafter referred to as "pre-petition debts"), meaning that the debtor is no longer individually liable for these debts. The granting of a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . ." 11 U.S.C. 523(a)(2). The purpose of the injunction is to protect the debtor's "fresh start" by ensuring that no debt collection efforts are taken against the debtor personally for pre-petition debts.

4. The United States Bankruptcy Code provides, however, that a debtor may agree with a creditor that the creditor can enforce what would otherwise be a discharged debt. In other words, a debtor may reaffirm his or her pre-petition debts, as long as certain requirements are met. These so-called "reaffirmation agreements" are enforceable only if, among other things, the agreement is filed with the bankruptcy court. If the debtor is not represented by an attorney, the bankruptcy court must hold a hearing to determine that the reaffirmation agreement would not impose an undue hardship on the debtor and is in the best interest of the debtor, and must approve the reaffirmation agreement before it becomes enforceable. 11 U.S.C. 524(c) and (d).

5. If the requirements of 11 U.S.C. 524(c) and (d) are not met, an agreement to reaffirm a debt is not binding and a creditor violates the bankruptcy code if it attempts to collect that debt. 11 U.S.C. 524(a).

VIOLATIONS OF SECTION 5(a) OF THE FEDERAL TRADE COMMISSION ACT

6. From at least 1985 to 1997, respondent regularly induced consumers who had filed for protection under Chapter 7 of the United States Bankruptcy Code to enter into agreements reaffirming some or all of their pre-petition consumer credit account debts that would otherwise be discharged through bankruptcy proceedings.

7. In numerous instances, respondent represented, expressly or by implication, to consumers that their reaffirmation agreements would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code.

8. In truth and in fact, in many cases respondent did not intend to file, and in fact did not file, the reaffirmation agreements with the bankruptcy courts. Therefore, the representation made in paragraph seven was, and is, false or misleading.

9. In numerous instances, respondent represented, expressly or by implication, to consumers that their reaffirmation agreements were legally binding on the consumers and that the consumers were legally required to pay their pre-petition debts.

10. In truth and in fact, in many cases, the reaffirmation agreements were not legally binding on the consumers and the consumers were not legally required to pay their pre-petition debts for reasons including, but not necessarily limited to, the following: (a) respondent did not file the reaffirmation agreements with the bankruptcy courts; or (b) respondent filed the reaffirmation agreements, but the agreements were then not approved by the bankruptcy courts. Therefore, the representation made in paragraph nine was, and is, false or misleading.

11. In the course and conduct of its business, respondent regularly collected from consumers debts that had been legally discharged in bankruptcy proceedings and that respondent was not permitted by law to collect. Respondent's actions have caused or were likely to cause substantial injury to consumers that is not offset by any countervailing benefits and is not reasonably avoidable by these consumers. 15 U.S.C. 5(n). Therefore, respondent's collection of debts that it was not permitted by law to collect was, and is, unfair.

12. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Azcuenaga not participating.

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 Boston Regional Office and the Division of Credit Practices 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 attorneys, and counsel for the 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, 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 had violated the said 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 sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Sears, Roebuck and Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 3333 Beverly Road, Hoffman Estates, Illinois.
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 Sears, Roebuck and Co., a corporation, its successors and assigns, and its officers, agents, representatives, and employees.
2. "*Debt*" shall mean any obligation or alleged obligation of a consumer to pay money arising out of any transaction.

3. "*Reaffirmation agreement*" shall mean any agreement between a creditor and debtor in bankruptcy whereby a debt that is otherwise dischargeable with respect to the personal liability of the debtor is reaffirmed by the debtor.

4. "*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 collection of any debt, shall not:

A. Misrepresent, expressly or by implication, to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that reaffirmation agreements will be filed in bankruptcy court;

B. Misrepresent, expressly or by implication, to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that any reaffirmation agreement is legally binding on the consumer; or

C. Collect any debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that respondent is not permitted by law to collect.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, shall not make any material misrepresentation, expressly or by implication, in the collection of any debt subject to a pending bankruptcy proceeding.

III.

It is further ordered, That respondent Sears, Roebuck and Co., and its successors and assigns, for five (5) years after the date of issuance of this order, shall maintain and upon request make available to the Federal Trade Commission business records demonstrating their compliance with the terms and provisions of this order, including but not limited to all reaffirmation agreements signed by consumers and records sufficient to show that such reaffirmation agreements were filed in bankruptcy courts and were subsequently

approved by bankruptcy courts as part of the underlying bankruptcy proceedings, if required by the United States Bankruptcy Code.

IV.

It is further ordered, That respondent Sears, Roebuck and Co., and its successors and assigns, for five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, managerial employees, and bankruptcy court representatives having debt collection 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, for five (5) years after each such statement acknowledging receipt of the order is signed and dated, maintain and upon request make available to the Federal Trade Commission for inspection and copying such statements. 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 ninety (90) days after the person assumes such position or responsibilities.

V.

It is further ordered, That respondent Sears, Roebuck and Co., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation(s) 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.

VI.

It is further ordered, That respondent, and its successors and assigns, shall provide notification of all proposed settlement terms relating to the action filed by the United States Attorney for the District of Massachusetts in *United States of America v. Sears, Roebuck and Co.*, Civil No. 97- 10839JLT, allegations made by the Attorneys General of various states and any other currently pending legal actions by government entities not cited herein, and all currently pending class action lawsuits, against respondent or any of its predecessors or affiliates, that challenge conduct similar to that challenged by the Commission in this proceeding, to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, in writing, at least ten (10) days before any such proposed settlement is submitted to a court for final approval.

VII.

It is further ordered, That respondent Sears, Roebuck and Co., 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 they have complied with this order.

VIII.

This order will terminate on February 20, 2018, 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.

Commissioner Azcuenaga not participating.

IN THE MATTER OF

AMERICA ONLINE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 907 OF THE ELECTRONIC FUND TRANSFER ACT, REGULATION
E AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3787. Complaint, March 16, 1998--Decision, March 16, 1998

This consent order prohibits, among other things, the Virginia-based Internet service provider from: misrepresenting the terms or conditions of any online service trial offer; or representing that online service is free or otherwise representing that consumers need not pay for the online service, unless any obligation to cancel or to take other action to avoid charges is disclosed clearly and prominently in the instructional materials, and all other advertisements include a statement directing consumers to where this disclosure is available. In addition, the consent order requires the respondent to disclose the manner in which fees or charges are assessed or calculated and prohibits misrepresentations concerning the terms or conditions of any electronic fund transfer from a consumer account.

Appearances

For the Commission: *Lucy Morris, David Medine, Nina Chang*
and *Steven Silverman*.

For the respondent: *Kevin Duke*, in-house counsel, Dulles, VA.

COMPLAINT

The Federal Trade Commission, having reason to believe that America Online, Inc. ("America Online" or "respondent") has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45-58, as amended, as well as the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693-1693r, as amended, and its implementing Regulation E, 12 CFR 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. America Online is a Delaware corporation with its principal office or place of business at 22000 AOL Way, Dulles, Virginia.
2. America Online has developed, advertised, offered for sale, sold, and distributed to the public its online service for personal computer users. Through its online service, America Online provides consumers with a range of options including electronic mail,

interactive magazines and newspapers, transactional services, and access to the Internet.

3. America Online has been and is now engaged in the regular practice of making "electronic fund transfer[s]" from "consumer" "account[s]" as those terms are defined in the EFTA and its implementing Regulation E.

4. The acts and practices of America Online alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act.

AMERICA ONLINE'S COURSE OF BUSINESS

5. America Online has disseminated or has caused to be disseminated advertisements for its online service through various media including, but not limited to, print, television, direct mail, promotional materials, and instructional materials. These advertisements include, but are not limited to, the attached Exhibits A and B, which contain the following statements:

Exhibit A

OPEN HERE TO BEGIN YOUR FREE TRIAL

It Just Takes 3 Easy Steps . . . To explore America Online® for TEN Hours on us. So, go for it and we'll see you online soon!

* * *

You NEED America Online . . . To access the Internet with graphical ease . . . to download over 120,000 software files and get computing support . . . To investigate your special interests or discover new ones AND MUCH MORE! All For Ten Hours, FREE!

The advertisement contains a statement at the bottom of an inside panel, in fine print, that provides:

Use of America Online requires a major credit card or checking account. Users outside the United States pay an additional per-minute surcharge at all times, including trial time. . . . Additional phone charges may apply. Your free trial time must be used within 30 days of your initial sign-on. Limit one free trial per household.

Exhibit B

Open Here For Free Software.

Try America Online FREE For 10 Hours! Try the nation's most exciting online service -- FREE.

* * *

Just Use This Software To Try America Online Free. . . . Start using your 10 FREE hours today.

* * *

Special Trial Offer 10 FREE Hours To Explore America Online....

The advertisement contains a statement at the bottom of an inside panel, in fine print, that provides:

Communication surcharges may apply. See online registration information for details on your free trial offer. Use of America Online requires a major credit card or checking account. Limit one free trial per household. Your free trial time must be used within 30 days of your initial sign-on. Members outside the 48 contiguous United States may pay a surcharge at all times, including trial time. . . .

6. Consumers choosing to participate in the free trial offer do so by connecting to the America Online service through a telecommunication modem attached to their personal computers. Upon their initial connection to the service, consumers view a series of registration screens including, but not limited to, the attached Exhibits C and D. The registration screens obtain identification and billing information from consumers, prompt consumers to select screen names and passwords for future access to the online service, and provide basic information about the online service, including the following details about the terms of the free trial offer:

Exhibit C

HERE'S HOW YOUR FREE TRIAL WORKS:

So you can explore America Online at no risk:

Your first TEN hours of connect time are free.

The monthly membership fee of \$9.95 has been waived for your first month.

Your free trial time must be used within 30 days of your first sign-on. You will not be charged unless you use more than your 10 free hours.

In addition, the registration screens display basic membership terms including the monthly charges incurred by America Online members:

Exhibit D

YOUR AMERICA ONLINE MEMBERSHIP

Your monthly membership fee of \$9.95 (charged at the end of your first month)

INCLUDES FIVE free hours of connect time EACH month.

After your five free hours, you may use additional time at the rate of \$2.95 per hour. . . .

7. Upon completion of the registration process, consumers are provided an opportunity to review America Online's Terms of Service Agreement and Rules of the Road. To do so, consumers must access the Members' Service area, available online. These documents, along with the Membership Conditions viewed during the registration process, are collectively referred to by America Online as the Terms

of Service and comprise the contract between America Online and its members.

8. While the hourly charge for use of the America Online service is disclosed during the registration process, neither the registration screens nor the Terms of Service disclose the manner in which America Online calculates the time that consumers spend online. Consumers may, however, obtain information on this subject by accessing online resource areas, including an online explanation of America Online's billing practices. This explanation, attached hereto as Exhibit E, provides in relevant part:

Exhibit E

CONNECT RATE[:] If you use MORE time online this month than the number of free hours noted at the top of this screen [5 hours/month], you will be charged a connect rate. You will be charged for your extra [connect] time on America Online in one- minute increments. . . .

AMERICA ONLINE'S VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

9. Through the means described in paragraphs five through eight, America Online has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within thirty days of their initial sign-on and do not exceed ten hours of online use.

10. In truth and in fact, consumers who participate in America Online's free trial offer and use less than ten hours of online time during the thirty days following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. In the advertising and sale of its online service, America Online has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within thirty days of their initial sign-on and do not exceed ten hours of online use. America Online has failed to disclose adequately to consumers that, upon completion of ten hours of online use or thirty days from the date of initial sign-on, whichever is earlier, consumers who fail to contact America Online and cancel their trial memberships are automatically enrolled as members of America Online and are charged a monthly membership fee plus applicable hourly fees. These fees continue to accrue until the consumers affirmatively cancel their memberships.

Such facts would be material to consumers in their purchase or use of the America Online service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

12. Through the means described in paragraphs five through eight, America Online has represented, expressly or by implication, that it calculates online connect time at the rate of \$2.95 per hour, prorated by one-minute increments, for time spent online beyond the five free hours of monthly connect time. In addition, America Online rounds up portions of a minute to the next highest whole minute. Thus, America Online has represented, for example, that an online session lasting 2 minutes and 46 seconds would be billed as 3 minutes.

13. In truth and in fact, America Online does not merely calculate online connect time at the rate of \$2.95 per hour, prorated by one-minute increments, with portions of a minute rounded up to the next whole minute. Rather, America Online adds 15 seconds of connect time to each online session, allegedly representing the time required for a user's modem to connect to America Online at the start of an online session and the time required to disconnect from America Online at the close of a session. When online usage consists of a whole minute plus 46-59 seconds, the additional 15 seconds causes the total connect time to exceed the next whole minute. Thus, for example, an online session of 2 minutes and 46 seconds, with the 15 second supplement, totals 3 minutes and 1 second and is billed as 4 minutes. Likewise, when an online session consists of a whole minute exactly, the additional 15 seconds causes the session to be rounded to the next whole minute. Therefore, the representation set forth in paragraph twelve was, and is, false or misleading.

14. In the advertising and sale of its online service, America Online has represented, expressly or by implication, that it calculates online connect time at the rate of \$2.95 per hour, prorated by one-minute increments, for time spent online beyond the five free hours of monthly connect time. America Online has failed to disclose adequately to consumers its practice of adding 15 seconds of connect time to each online session, as described in paragraph thirteen. Such facts would be material to consumers in their purchase or use of the America Online service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

15. In the course of the online registration process, consumers view a screen titled "Billing Options," attached as Exhibit F, that states:

Exhibit F

Choose a billing method

To ensure that we have the correct billing information on file for charges incurred beyond your trial time, please select one of the following payment options:

VISA

MasterCard

American Express

DiscoverCard

Checking

Consumers choosing the Checking option are first informed that America Online will deduct automatically from their checking accounts each month any charges that they incur in using the online service. Until at least September 1995, such consumers also viewed a screen, attached as Exhibit G, that states:

Exhibit G

Processing your Checking Authorization

Thank you for trying America Online. In the next few days you will receive a checking authorization form in the mail. This form gives America Online authorization to deduct the charges you incur from your checking account automatically every month. We request that this form be returned at your earliest convenience. Until it is received, your account will be limited to \$50.00.

16. Through the means described in paragraph fifteen, America Online has represented, expressly or by implication, that it would not debit consumers' checking accounts before it received the authorization forms permitting it to do so.

17. In truth and in fact, America Online in many instances debited the checking accounts of consumers before receiving their authorization forms or without ever receiving such forms. Therefore, the representation set forth in paragraph sixteen was, and is, false or misleading.

AMERICA ONLINE'S VIOLATIONS OF SECTION 907 OF THE EFTA

18. As described in paragraph seventeen, in the course and conduct of its business, America Online in many instances has debited consumers' checking accounts before receiving their authorization forms or without ever receiving such forms. In addition, in the course and conduct of its business, America Online in many

instances has failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers.

19. America Online's aforesaid practices violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

20. The acts and practices of America Online 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. Such acts and practices additionally violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d).

Commissioner Azcuenaga not participating.

Complaint

125 F.T.C.

EXHIBIT A

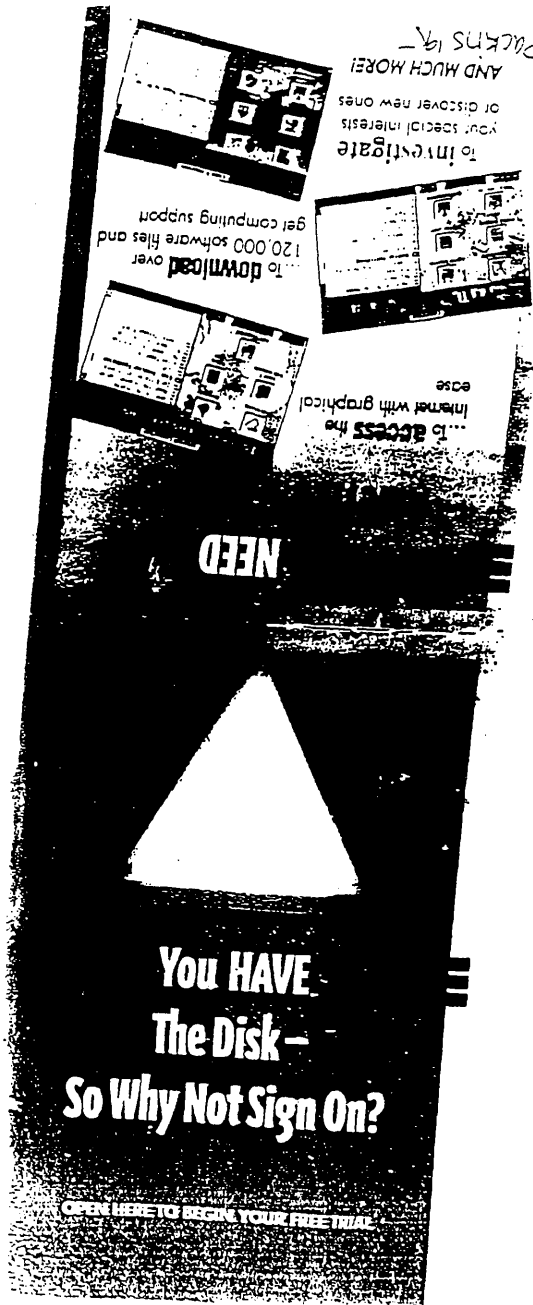


EXHIBIT A

Is Your America Online
Software Missing?

No Problem!

Call 1-800-827-6364
For A FREE Replacement.

CCC036

- ▼ Use this
- ▼ special
- ▼ registration
- ▼ number and
- ▼ password
- ▼ for your
- ▼ free trial.



If you're having trouble connecting
to America Online, call us toll-free at:

1-800-827-3338

EXHIBIT A

.....

It Just Takes **3 Easy** Steps...

STEP 1
Insert the attached disk in your disk drive and double-click on the Install icon.

STEP 2
Click Continue when prompted and click on the Install button to begin installing the America Online software.

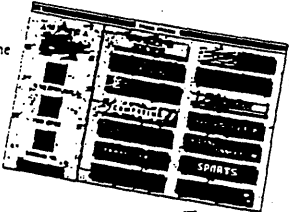
STEP 3
Once installation is complete, click on OK, open your new folder, double-click on the America Online icon, and follow the simple, step-by-step instructions on your screen. When prompted, enter the registration number and password below.

...To explore
America Online®
for **TEN** hours
on us.


So, go for it
and we'll
see you online
soon!

Are You Ready?

Are you ready to use the online service with the most intuitive interface around, because it has all the point-and-click ease of your Mac??



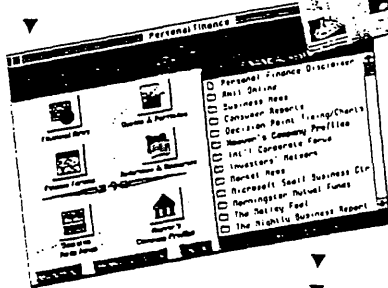
Are you ready to access text and compelling graphics online and download graphic files to view, save, and send?



Complaint

EXHIBIT A

of all the latest **NEWS**
stories and to track your
with the
click of a mouse?



Are you ready to **chat** online with thousands of members
across the nation and meet recognized *personalities*
from academia to Hollywood at online conferences?

If You're Ready For All That, Then
You're Ready For America Online!

...of all the latest NEWS stories and to track your with the click of a mouse? Are you ready to chat online with thousands of members across the nation and meet recognized personalities from academia to Hollywood at online conferences? If You're Ready For All That, Then You're Ready For America Online! ...

EXHIBIT B

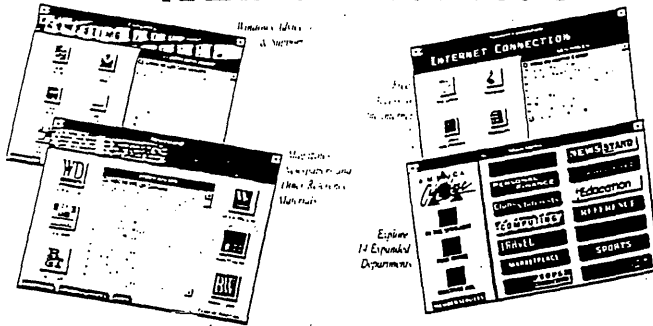
OPEN HERE FOR FREE SOFTWARE
 TRY AMERICA ONLINE FREE FOR 10 HOURS!



SPECIAL TRIAL OFFER

10 FREE HOURS TO EXPLORE

AMERICA ONLINE FOR WINDOWS



TRY THE NATION'S MOST EXCITING ONLINE SERVICE—FREE

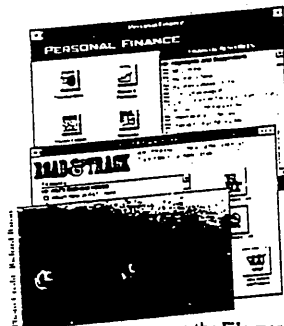
14,900 BROADBAND NOW AVAILABLE

DM-Still Use

EXHIBIT B

JUST USE THIS
SOFTWARE
TO TRY
AMERICA ONLINE
FREE.

Is Your AMERICA ONLINE
SOFTWARE MISSING?
NEED MAC OR DOS FORMAT?
NO PROBLEM.
CALL 1-800-827-6364
FOR A FREE REPLACEMENT.



Sign on with this disk and it's all yours — your choice of over 60,000 free software and shareware programs along with online support from more than 300 hardware and software companies. Explore hundreds of services, including live, interactive chat, TIME Magazine, Compton's searchable encyclopedia, the Windows Support Forum, live conferences and events, and much more.

Read your favorite newspaper or magazine online, and with America Online's new graphics viewer, download photographs and graphics and see them online!

Start using your 10 FREE hours today.

Just insert the enclosed disk in your disk drive, click on the **File** menu of your **Windows Program Manager**, and select **Run**. Then type A:\SETUP (or B:\SETUP) and press ENTER. Follow the easy instructions and you'll be online in minutes!

America Online is also available in DOS and Macintosh formats.

If you're having trouble connecting to America Online or need a different disk size or type, call us toll-free at 1-800-827-6364.



EXHIBIT C

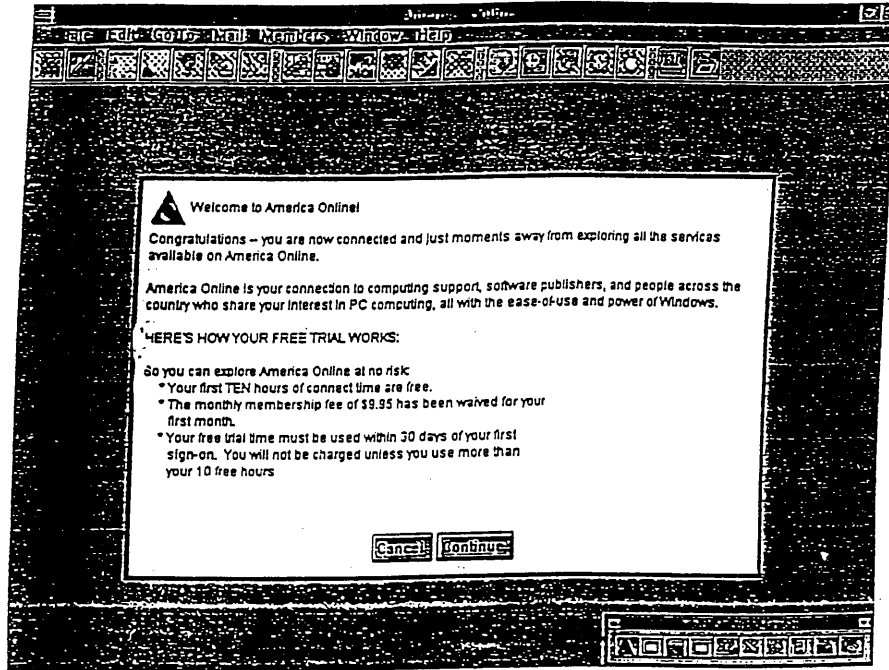
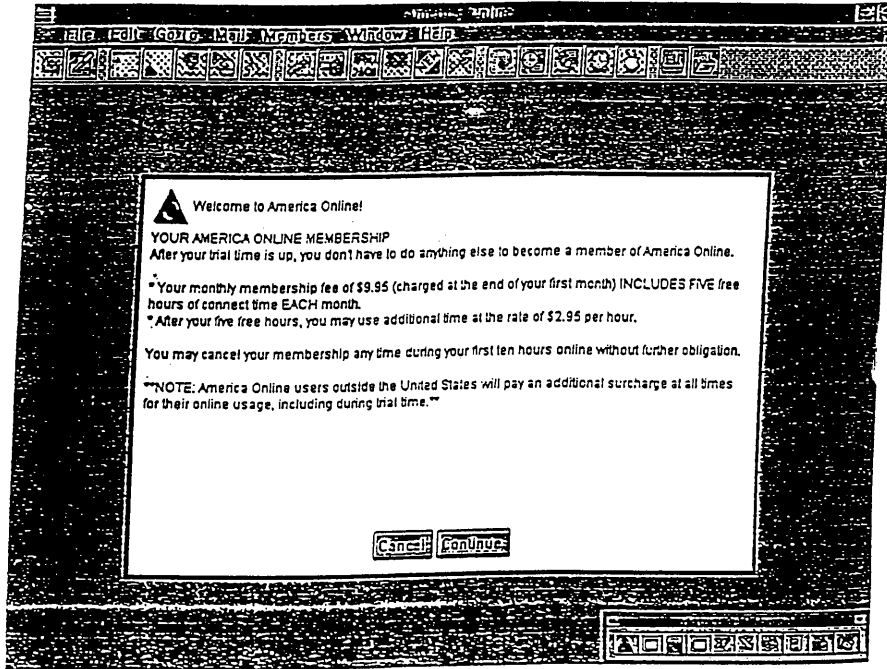


EXHIBIT D



Complaint

125 F.T.C.

EXHIBIT E

The following is an explanation of the terms described at the top of this screen:

MONTHLY FEE AS a part of your trial offer, you will pay no monthly fee the first month. At the end of your first month online (on your anniversary date, noted above as next billing date) you will be charged the fee for your second month of membership.

FREE HOURS AS part of your trial offer, you will get free time online to explore America Online. At the top of your screen, you will see the number of free hours offered during your first month. These free hours are only valid during the first thirty days of membership.

CONNECT RATE If you use MORE time online this month than the number of free hours noted at the top of this screen, you will be charged a connect rate. You will be charged for your extra time on America Online in one-minute increments. If you live outside the continental United States, you will be assessed a 20 cent per minute telecommunications surcharge. This surcharge will apply any time you are online.

DAYTIME SURCHARGE Surcharges apply only if noted above, from 6am. to 6pm. Monday through Friday.

NEXT BILLING DATE On the date noted above, two things will happen: You will be charged your monthly fee for your second month as an America Online member AND you will be granted more free time to use America Online during that month.

EXHIBIT F

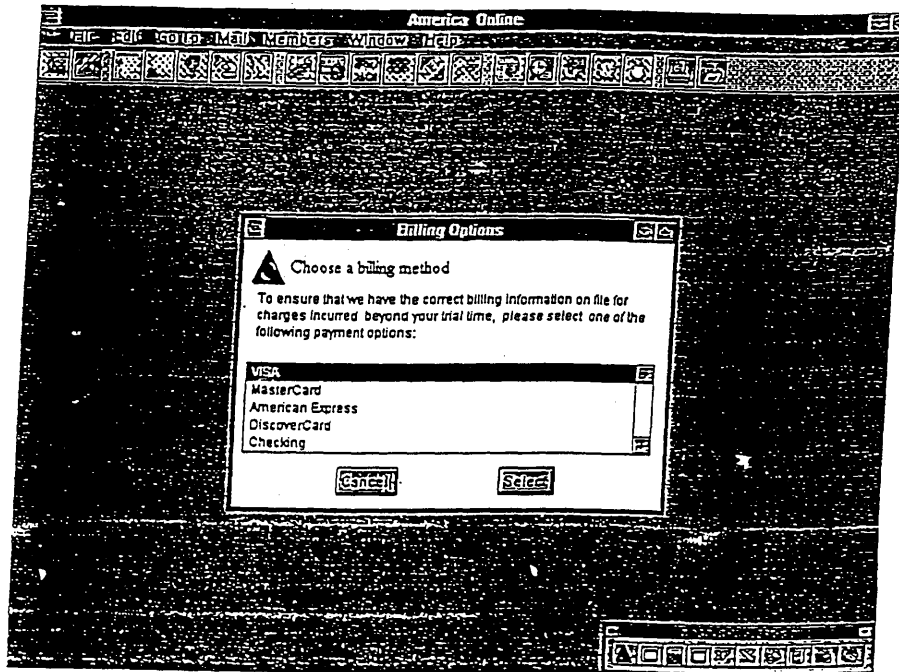
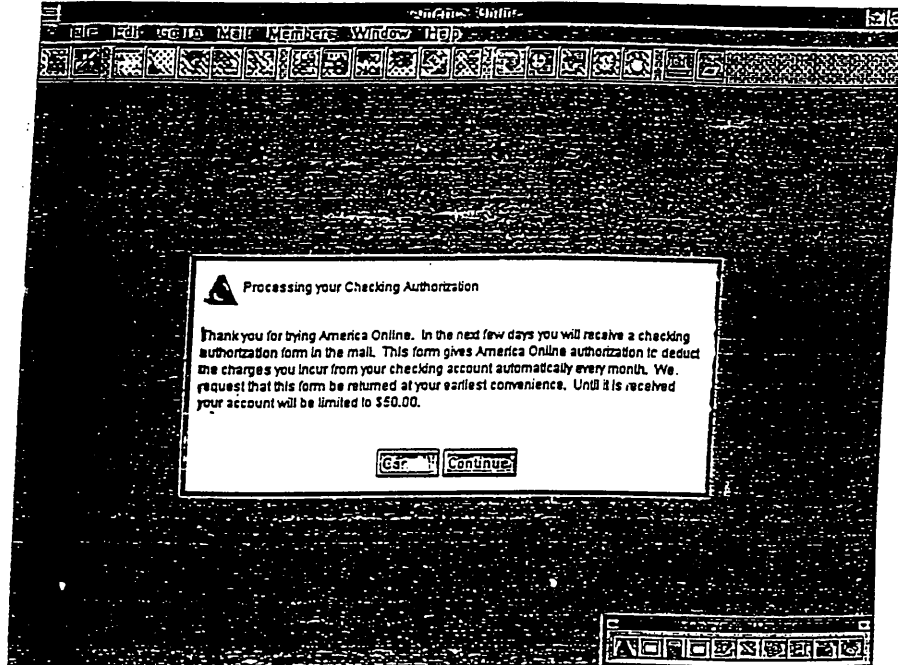


EXHIBIT F
000001

EXHIBIT G



000817

000817

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 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 the respondent with violation of the Federal Trade Commission Act and the Electronic Fund Transfer Act and its implementing Regulation E; and

The respondent, its attorneys, and counsel for the 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 the 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 Acts and Regulation, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent America Online, Inc. is a Delaware corporation, with its principal office or place of business at 22000 AOL Way, Dulles, VA.

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 terms shall have the meanings set forth below, unless specifically stated otherwise:

1. "*Account*" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution, as defined below, and established primarily for personal, family, or household purposes.

2. "*Financial institution*" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.

3. "*Consumer*" means a natural person or other entity which may be billed for online services; provided that, for purposes of paragraphs V, VI, and VIII(A) of this order, "consumer" shall only mean a natural person.

4. "Electronic Fund Transfer," as defined by the Electronic Fund Transfer Act, 15 U.S.C. 1693a(6), means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account, except that it does not mean a transaction made using a debit card or debit card account which a consumer has identified as a credit card or credit card account.

5. "Online Service" shall mean a respondent-controlled access, information, communication, or transaction service which is made available to consumers as a paid service via connection by computers, modems, or other means, to a proprietary or non-proprietary network of telecommunication or computer facilities.

6. Unless otherwise specified, "*respondent*" shall mean America Online, Inc., its successors and assigns, and its officers, agents, servants, divisions, and employees.

7. "*Respondent-controlled*" shall mean respondent makes the management decisions affecting compliance with the provisions of this order.

8. "*In or affecting 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 respondent-controlled corporation, subsidiary or other device, in connection with the advertising, promotion, offering for sale, sale, or

distribution of any Online Service in or affecting commerce, shall not misrepresent, expressly or by implication, the terms or conditions of any trial offer of any Online Service.

II.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not represent, expressly or by implication, that the Online Service is offered "free," "without risk," "without charge," "without further obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the Online Service unless respondent discloses clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service.

Provided, that for purposes of this paragraph II, "clearly and prominently" shall mean with respect to any representation, described in the foregoing paragraph and made in respondent's detailed instructional materials (e.g., starter kits, guidebooks) distributed to consumers, a disclosure in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it.

Provided, further, that for purposes of this paragraph II, "clearly and prominently" shall mean, as to any representation described above in this paragraph, apart from any representation covered by the preceding proviso, and made in the context of any advertisement or promotion of the Online Service through any media, including radio, television or other broadcast media, direct mail, interactive network (except as provided in paragraph IV below), or print media (including promotion packages attached thereto), a statement directing consumers to a location where the disclosure required herein will be available (e.g., "For conditions and membership details," followed by: "load up trial software" or "see registration process" or words of similar effect.) In the case of an audio statement, the statement shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend it. In the case of a video statement, the statement shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In the case of print media, the statement shall be in a

type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

III.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall not misrepresent, expressly or by implication, the fees or charges assessed for such Online Service.

IV.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall disclose, clearly and prominently, during the final registration process, and prior to the consumer incurring any financial obligation or liability to respondent, the terms of all mandatory financial obligations to respondent which will be incurred by the consumer as a result of using such Online Service, including but not limited to the following:

A. The financial terms and conditions of any plan or practice (*e.g.*, trial offer) by which consumers enroll in or renew enrollment in such Online Service and by which, accordingly, respondent charges the consumer; provided, that if such plan or practice exists, respondent must also disclose clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service and provide at least one reasonable means by which the consumer may effectively cancel his or her enrollment by a date certain and thereby avoid further charges;

B. Any mandatory membership, enrollment, or usage fees (*e.g.*, monthly or hourly usage charges); and

C. The manner in which such fees or charges are assessed and calculated, provided, that respondent may satisfy this provision by disclosing that: (i) additional charges might apply; (ii) information about assessing and calculating the consumer's fees or charges can be

found online; and (iii) the exact location, such as the particular area online (e.g., Keyword: Billing), where consumers can find detailed information about assessing and calculating the consumer's fees or charges.

Provided, however, that for purposes of this paragraph IV, a disclosure is "clearly and prominently" made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In addition to the foregoing, such disclosure shall not be avoidable by consumers. Provided, further, that such disclosure shall not be deemed avoidable for purposes of this order based solely on an ordinary consumer's failure to read it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

V.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any consumer account, shall not misrepresent the terms or conditions of such Electronic Fund Transfer.

VI.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any consumer account, shall not:

A. Fail to obtain consumer authorization before initiating any Electronic Fund Transfer from any consumer account as required by Section 907(a) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a), and Section 205.10(b) of Regulation E, 12 CFR 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

B. Fail to provide any consumer with advance notice of Electronic Fund Transfers from the consumer's account varying in amount from previous transfers as required by Section 907(b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(b), and Section 205.10(d) of Regulation E, 12 CFR 205.10(d), as more fully set out in Section

205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

VII.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for five (5) years after the last date of dissemination of any representation covered by paragraphs I - V of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying business records demonstrating compliance with the terms and provisions of this order, except as provided for in paragraph VIII of this order, including, but not limited to:

A. All advertisements, promotional materials, and instructional materials distributed or accessible to consumers containing the representation;

B. For five (5) years after the date of receipt or generation, all written complaints from consumers, governmental or consumer protection organizations and responses thereto; provided, however, that in lieu of maintaining all electronic mail communications, respondent may comply with this provision by maintaining a representative sample of such communications.

VIII.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for two (2) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All documents pertaining to respondent's use of Electronic Fund Transfers from consumer accounts, including written complaints from consumers, governmental or consumer protection organizations and responses thereto; provided, however, in lieu of maintaining all electronic mail communications, respondent may comply with this provision by maintaining a representative sample of such communications; and

B. All business records which demonstrate respondent's compliance with paragraph VI of this order; provided, however, in lieu of maintaining all electronic mail communications, respondent

may comply with this provision by maintaining a representative sample of such communications.

IX.

It is further ordered, That respondent, and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, senior managers (*e.g.*, vice-presidents or above), and agents (including, without limitation, advertising agencies) 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 and its successors and assigns, shall prepare a summary of this order, and shall distribute a copy of that summary to all current and future managers with responsibilities or duties affecting compliance with the terms of this order.

X.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, 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 dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or respondent-controlled subsidiary or respondent-controlled 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.

XI.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, 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.

XII.

It is further ordered, That, no later than six (6) months from the effective date of this order, respondent shall establish and implement a program to educate consumers about consumer use of electronic payment systems. Such program:

A. May be established jointly with, or under the auspices of, an appropriate trade association or other consumer education program (e.g., Project Open);

B. Shall have a duration of not less than one (1) year from the date of implementation;

C. Shall be of a scope and employ media reasonably necessary to reach a wide audience of consumers, including but not limited to:

1. At least 50,000 color brochures designed, produced, printed, and disseminated by respondent directly to consumers and organizations with direct access to consumers likely to use electronic payments systems;

2. The Internet;

3. Reference on respondent's Online Service; and

4. A direct link to the Internet from respondent's Online Service;

and

D. Shall include, but not be limited to, information about: various types of electronic payment systems available to consumers; obligations of consumers, merchants, and financial institutions in using such systems; how such payment systems are used, including the means by which consumers may attempt to prevent the fraudulent use of those systems; various legal protections available to consumers under each system; and organizations, including law enforcement agencies, from which consumers may obtain further information or assistance.

No later than ninety (90) days from the date of issuance of this order, respondent shall submit for review and approval to the Associate Director, Division of Credit Practices, a draft plan for the program and drafts of any materials to be disseminated pursuant to paragraph

XII(C) above. Such approval shall not be unreasonably withheld. Such description and materials should be sent by overnight delivery to the Associate Director, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XIII.

This order will terminate on March 16, 2018, 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.

Commissioner Azcuenaga not participating.

Complaint

125 F.T.C.

IN THE MATTER OF

PRODIGY SERVICES CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 907 OF THE ELECTRONIC FUND TRANSFER ACT, REGULATION
E AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3788. Complaint, March 16, 1998--Decision, March 16, 1998

This consent order prohibits, among other things, the New York-based Internet service provider from: misrepresenting the terms or conditions of any online service trial offer; or representing that online service is free or otherwise representing that consumers need not pay for the online service, unless any obligation to cancel or to take other action to avoid charges is disclosed clearly and prominently in the instructional materials, and all other advertisements include a statement directing consumers to where this disclosure is available.

Appearances

For the Commission: *Lucy Morris, David Medine, Nina Chang and Steven Silverman.*

For the respondent: *Richard Kurnit, Frankfurt, Garbus, Klein & Salz, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Prodigy Services Company, a general partnership, which has been succeeded by Prodigy Services Corporation, a corporation, has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, as amended, as well as the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693-1693r, as amended, and its implementing Regulation E, 12 CFR 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Prodigy Services Company was a New York general partnership comprised of two equal partners: International Business Machines Corporation and Sears, Roebuck and Company. Prodigy Services Corporation, a Delaware corporation with its principal office or place of business at 445 Hamilton Avenue, White Plains, New York, is a successor corporation to Prodigy Services Company, a general partnership. Prodigy Services Company, a general

partnership, and Prodigy Services Corporation, a successor corporation, shall be hereinafter collectively referred to as "Prodigy."

2. Prodigy has developed, advertised, offered for sale, sold, and distributed to the public its online service for personal computer users. Through its online service, Prodigy has provided consumers with a range of options including electronic mail, interactive magazines and newspapers, transactional services, and access to the Internet.

3. Prodigy has been and is now engaged in the regular practice of making "electronic fund transfer[s]" from "consumer" "account[s]" as those terms are defined in the Electronic Fund Transfer Act and its implementing Regulation E.

4. The acts and practices of Prodigy alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PRODIGY'S COURSE OF BUSINESS

5. Prodigy has disseminated, or has caused to be disseminated, advertisements for its online service through various media including, but not limited to, print, television, the Internet, direct mail, promotional materials, and instructional materials. These advertisements include, but are not limited to, the attached Exhibits A and B, which contain the following statements:

Exhibit A

10 free* hours

10 free hours* of prodigy to surf the internet

Free Trial!

FREE PRODIGY SOFTWARE*

FREE 1ST MONTH'S MEMBERSHIP

FREE 10 HOURS to explore PRODIGY in your first month

The advertisement contains a statement at the bottom of the back panel, in fine print, that provides:

* This trial offer includes the first month's membership fee and 10 free hours of trial usage the first month. Usage beyond the trial offer will result in extra fees, even during the first month. 10 free hours will not carry over into future billing months and may not be used for certain features. Some features may be charged for separately.

Offer details available during online enrollment. . . .

Exhibit B

Get 10 free hours* of Prodigy with easy Internet access!

Get 10 free hours to explore the Internet

To get free software and 10 free hours CALL US AT 1-800-PRODIGY

After your 10 free hours, Prodigy is only \$9.95 a month for 5 hours, with no extra charge for Internet access.

The advertisement contains a statement at the bottom of the front panel, in fine print, that provides:

*This offer includes first month's membership fee and 10 free hours of usage in the first month. Usage beyond the trial offer will result in extra fees. Some features charged for separately. . . .

6. Consumers choosing to participate in the free trial offer do so by connecting to the Prodigy service through a telecommunication modem attached to their personal computers. Upon their initial connection to the service, consumers view a series of enrollment screens which request identification and billing information, prompt them to select passwords for future access to the online service, and provide basic information about the online service.

7. At times relevant to this complaint, the online enrollment process included a "Welcome" screen, attached as Exhibit C, that provides, in part:

Exhibit C

Welcome to the PRODIGY service. There's never been a better time to connect with the PRODIGY service. Live on PRODIGY, right now, you can have instant access to investment advice, sports scores, business news, travel tips, games, an encyclopedia, and so much more!

To continue with the enrollment process, consumers next must choose one of three icons or "buttons" arrayed vertically on the right side of the "Welcome" screen. These buttons provide, in descending order, the following three options: "Enroll Now," "Plan Details," and "Guarantee." The "Enroll Now" button has a flashing border.

a. When consumers select the "Enroll Now" button from the "Welcome" screen, the enrollment process continues without display of either the "Plan Details" screen or the "Guarantee" screen.

b. The "Plan Details" button leads to a screen that provides:

Exhibit D

Plan Details

Prodigy offers several Membership Plans. For details about your Plan, please refer to the materials included with your software. Other plans are available online. Certain features are priced separately and prices are designated online. Charges for extra-fee features used by your household will be billed to your account when online, Jump: fees for details about pricing.

If you have any questions, please call us at 1-800-PRODIGY (1-800-776-3449).

From this screen, consumers next must choose one of two buttons to view another screen: "Previous Page" or "Enroll Now." The "Previous Page" button leads back to the "Welcome" screen. Choosing the "Enroll Now" button causes the enrollment process to continue without display of the "Guarantee" screen.

c. From the "Welcome Screen," the "Guarantee" button leads to a screen that provides:

Exhibit E

Satisfaction Guarantee

We want you to be completely satisfied with the service. If you're not, let us know during your first month and we'll cancel your Membership. Otherwise, we'll automatically continue your Membership. Other plans are available online.

From this screen, consumers next must choose one of two buttons to view another screen: "Previous Page" or "Enroll Now." The "Previous Page" button leads back to the "Welcome" screen. Choosing the "Enroll Now" button causes the enrollment process to continue without display of the "Plan Details" screen.

8. In the course of the enrollment process, Prodigy requires consumers to choose a billing method. Consumers must provide a credit, charge, or debit card number. Alternatively, consumers may choose an automatic checking account debiting program called AutoPay. Prodigy requires consumers choosing AutoPay to submit a written authorization form before debiting their accounts. Prodigy does not require such written authorization from consumers choosing to pay by debit card.

PRODIGY'S VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

9. Through the means described in paragraphs five through eight, Prodigy has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided

only that they use the trial time within one month of their initial sign-on and do not exceed ten hours of online use.

10. In truth and in fact, consumers who participate in Prodigy's free trial offer and do not exceed ten hours of online time during the month following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. Therefore, the representation set forth in paragraph nine was, and is, false or misleading.

11. In the advertising and sale of its online service, Prodigy has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within one month of their initial sign-on and do not exceed ten hours of online use. Prodigy has failed to disclose adequately to consumers that, upon completion of ten hours of online use or one month from the date of initial sign-on, whichever is earlier, consumers who fail to contact Prodigy and cancel their trial memberships are automatically enrolled as members of Prodigy and are charged a monthly membership fee plus applicable usage fees. These fees continue to accrue until the consumers affirmatively cancel their memberships. Such facts would be material to consumers in their purchase or use of the Prodigy service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

PRODIGY'S VIOLATIONS OF SECTION 907 OF THE EFTA

12. As described in paragraph eight, in the course and conduct of its business, Prodigy in many instances has debited consumers' accounts via their debit cards without their written authorization. In addition, in the course and conduct of its business, Prodigy in many instances has failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers.

13. Prodigy's aforesaid practices violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

14. The acts and practices of Prodigy 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. Such acts and practices additionally violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d).

Commissioner Azcuenaga not participating.

EXHIBIT A

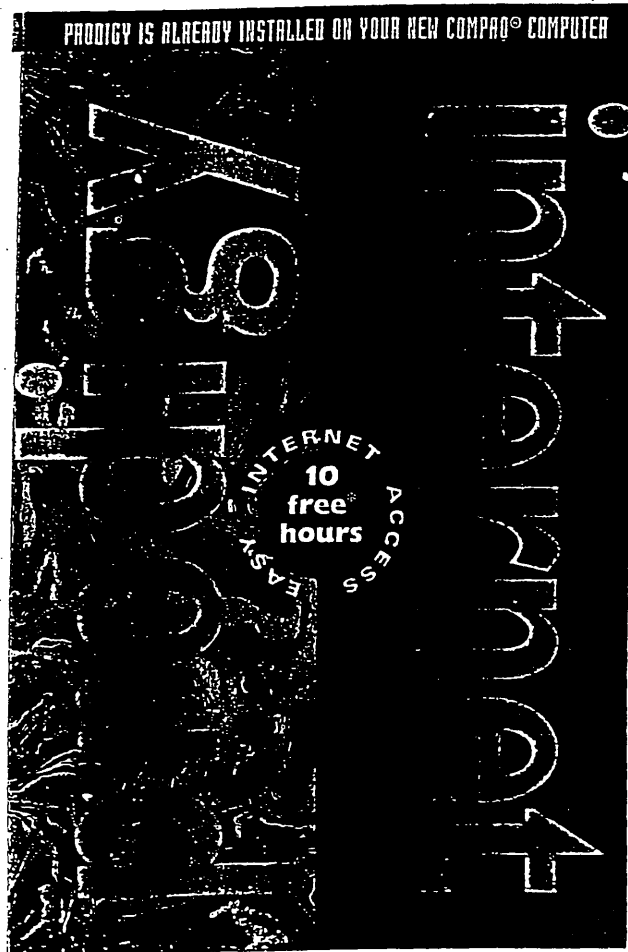
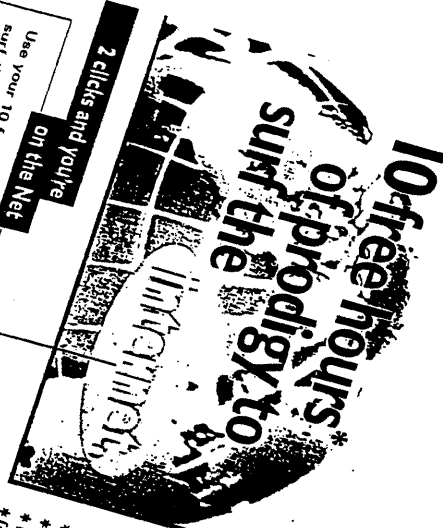


EXHIBIT A-1



2 clicks and you're on the Net

Use your 10 free hours to surf the Internet...take a computer tour of White House, browse the Library of Congress, or correspond with millions of people around the world who share your interests. Featuring:

- * Point-and-click access to Internet's **Wide Web** and its vast resources.
- * Easy access to Internet's **World WISENET Newsgroups**.
- * Full Internet **E-Mail** to message anyone, anywhere in the world.

PRODIGY America's fastest online service, connects you to the people and information you can most need.

No other online service offers all this:

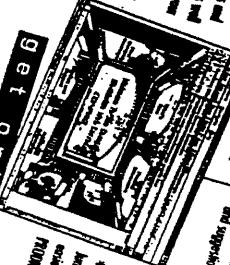
- * The Day
- * Hundreds of help labels built
- * Personal favorites when you log
- * In the hot spot guide
- * Instant news and financial news
- * Regular updated encyclopedia
- * Author correspondence
- * Complete travel information and reservations
- * And...



HomeWork Helper™ - a complete electronic library of 700,000 articles to help you take a personal research course and more.

COMPAG Support Online

Model parts and information at your fingertips for your Commodore 64, 800, and many.



get online hbw!

Getting started is simple!

PRODIGY is already installed on your computer. Just select **PRODIGY** from the Windows Program list. We'll ask you a few simple questions, you'll then receive an ID and create a password during the online enrollment process.

Welcome!

After you've started, spend a few moments in the Home window area of the Windows Help Center. There you'll find out how to get around most of your new online.

- * How members obtain Round Mail™ with you and suggestions to get you started.
- * How members learn and teach you how to navigate.
- * Learn how to use help windows, which are the PRODIGY!

Complaint

125 F.T.C.

EXHIBIT A

EASY INTERNET ACCESS!



Free Trial!

- * FREE PRODIGY® SOFTWARE*
- * FREE 1ST MONTH'S MEMBERSHIP
- * FREE **10** HOURS

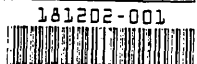
to explore PRODIGY in your first month.

Connect now because the Internet's never been hotter and nobody makes it as easy as PRODIGY.

* The trial offer includes the first month's membership fee and 10 free hours of trial usage the first month. Usage beyond the trial offer will result in extra fees, even during the first month. 10 free hours will not carry over into future billing months and may not be used for certain features. Some features may be charged for separately.

Offer details available during online enrollment. Fees, service charges, features and allowances are as of 3/95 and are subject to change without notice. Credit card required upon enrollment. Phone charges may apply. Some features not available outside the U.S. Service and instructions in English. Fees in U.S. Dollars. Limited time offer subject to change.

PRODIGY is a registered mark of Prodigy Services Company. Microsoft is a registered trademark, and Windows and the Windows Logo are trademarks of Microsoft Corporation. (C)1995 Prodigy Services Company. All rights reserved.



PCPS
5090

EXHIBIT A-1

EXHIBIT B

Open doors you never knew existed.

The White House

The Dotans Science Center

The Los Angeles Music Center

NASA

London University

The Office of the Secretary of Defense

The Astronomical Museum, Bologna

New Zealand Symphony Orchestra

get 10 free hours* of Prodigy with easy Internet access! 33235/8065

name _____

address _____

city _____ state _____ zip _____

signature _____ phone number _____

we'll send you Prodigy software for Windows* or call 1-800-PRODIGY ext. 661

*The offer includes the Prodigy 1.0 software for one 10 free hours of use in the first month. Usage beyond the first month will result in a charge. This offer is subject to change without notice. Prodigy 1.0 software is available for Windows 3.11 and Windows 95. Prodigy 1.0 software is available for Windows 3.11 and Windows 95. Prodigy 1.0 software is available for Windows 3.11 and Windows 95. Prodigy 1.0 software is available for Windows 3.11 and Windows 95.

Complaint

125 F.T.C.

EXHIBIT B

prodigy

- LEARNING
- GAMES
- COMMUNICATIONS
- MAIL
- NEWS
- SEARCH
- SHOPPING
- TRAVEL
- VIDEO
- VOICE
- WEB
- WORLD WIDE WEB
- YACHTING

The new Prodigy features a whole new look that makes it easier to find whatever you're into.

The best Internet access

While there are plenty of online services out there today, there's only one that gives you the easiest access to the Internet. And that's Prodigy. During a recent comparison test at the spring *Internet World* show, Prodigy was unanimously voted the best for Internet access.

Build your own home page

Prodigy is now the only online service that

get 10 free hours to explore the Internet allows you to create your own

Hey, this is pretty cool. An internet music store where you can hear bands you probably won't find in your local record shop! Wonder what else is out there?

Virtual World. It's like a Star Trek/Top Gun hybrid. Plus, in this online game you play *real* people (not computers).

home page on the Internet's World Wide Web. That way anyone surfing the Net can find out more about you, what you do, your interests, or even where you think you can find the best Bloody Mary.

Explore your interests

You could also choose to explore any of your other interests. Music. Investments. The mating ritual of the three-toed tree sloth. Because whatever you're into, we've got it.

To get free software and 10 free hours

CALL US AT 1-800-PRODIGY ext. 661, email us at freeint@prodigy.com or download the software directly from our World Wide Web location, www.asranet.com (check your screen for our icon first; you may already have Prodigy installed). After your 10 free hours, Prodigy is only \$9.95 a month for 5 hours, with no extra charge for Internet access.

CALL 1-800-PRODIGY (ext. 661)



NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL/PERMIT NO. 98/JOHNSON CITY, TN

POSTAGE WILL BE PAID BY ADDRESSEE

prodigy

P.O. BOX 3667
JOHNSON CITY, TN 37615-4467

EXHIBIT C

★ PRODIGY Service Enrollment

MEMBER SERVICES

Welcome to the PRODIGY service

There's never been a better time to connect with the PRODIGY service. Live on PRODIGY, right now, you can have instant access to investment advice, sports scores, business news, travel tips, games, an encyclopedia, and so much more!

Right now millions of people across the country use PRODIGY because it's fun, it's useful, and it's a great value.

See for yourself. Take a moment to enroll now. Then, you too will be live on PRODIGY!

[Enroll Now](#)

[Plan Details](#)

[Guarantee](#)

FREE

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POWER 3

EXHIBIT D

PRODIGY Service Enrollment

Plan Details

Enroll Now

Previous Page

Prodigy offers several Membership Plans. For details about your Plan, please refer to the materials included with your software. Other plans are available online.

MEMBER SERVICES

Certain features are priced separately and prices are designated online. Charges for extra-fee features used by your household will be billed to your account. When online, Jump fees for details about pricing.

If you have any questions, please call us at 1-800-PRODIGY (1-800-776-3449).



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EXHIBIT E

PRODIGY Service Enrollment

Satisfaction Guarantee

Enroll Now

Previous Page

MEMBER SERVICES

We want you to be completely satisfied with the service. If you're not, let us know during your first month and we'll cancel your Membership. Otherwise, we'll automatically continue your Membership

Other plans are available online

Copied from the PRODIGY(R) service 07/21/95 12:27

EXHIBIT E

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 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 the respondent with violation of the Federal Trade Commission Act and the Electronic Fund Transfer Act and its implementing Regulation E; and

The respondent, its attorneys, and counsel for the 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 the 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 Acts and Regulation, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Prodigy Services Corporation is an Ohio corporation with its principal place of business or office at 445 Hamilton Avenue, White Plains, New York.

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 terms shall have the meanings set forth below, unless specifically stated otherwise:

1. "*Account*" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution, as defined below, and established primarily for personal, family, or household purposes.

2. "*Financial institution*" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.

3. "*Consumer*" means a natural person or other entity that may be billed for online services; provided that, for purposes of paragraphs IV and VI of this order, "consumer" shall only mean a natural person.

4. "*Electronic Fund Transfer*," as defined by the Electronic Fund Transfer Act, 15 U.S.C. 1693a(6), means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account, except that it does not mean a transaction made using a debit card or debit card account which a consumer has identified as a credit card or credit card account.

5. "*Online Service*" shall mean a respondent-controlled access, information, communication, or transaction service which is made available to consumers as a paid service via connection by computers, modems, or other means, to a proprietary or non-proprietary network of telecommunication or computer facilities.

6. Unless otherwise specified, "*respondent*" shall mean Prodigy Services Corporation, its successors and assigns, and its officers, agents, servants, divisions, and employees.

7. "*Respondent-controlled*" shall mean respondent makes the management decisions affecting compliance with the provisions of this order.

8. "*In or affecting 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 respondent-controlled corporation, subsidiary or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not

misrepresent, expressly or by implication, the terms or conditions of any trial offer of any Online Service.

II.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not represent, expressly or by implication, that the Online Service is offered "free," "without risk," "without charge," "without further obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the Online Service unless respondent discloses clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service.

Provided, that for purposes of this paragraph II, "clearly and prominently" shall mean with respect to any representation, described in the foregoing paragraph and made in respondent's detailed instructional materials (*e.g.*, starter kits, guidebooks) distributed to consumers, a disclosure in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it.

Provided, further, that for purposes of this paragraph II, "clearly and prominently" shall mean, as to any representation described above in this paragraph, apart from any representation covered by the preceding proviso, and made in the context of any advertisement or promotion of the Online Service through any media, including radio, television or other broadcast media, direct mail, interactive network (except as provided in paragraph IV below), or print media (including promotion packages attached thereto), a statement directing consumers to a location where the disclosure required herein will be available (*e.g.*, "For conditions and membership details," followed by: "load up trial software" or "see registration process" or words of similar effect.) In the case of an audio statement, the statement shall be delivered in a volume and cadence sufficient for an ordinary consumer to notice, hear, and comprehend it. In the case of a video statement, the statement shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In the case of print media, the statement shall be in a

type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

III.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall disclose, clearly and prominently, during the final registration process, and prior to the consumer incurring any financial obligation or financial liability to respondent, the terms of all mandatory financial obligations to respondent which will be incurred by the consumer as a result of using such Online Service, including but not limited to the following:

A. The financial terms and conditions of any plan or practice (*e.g.*, trial offer) by which consumers enroll in or renew enrollment in such Online Service and by which, accordingly, respondent charges the consumer; provided, that if such plan or practice exists, respondent must also disclose clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service and provide at least one reasonable means by which the consumer may effectively cancel his or her enrollment by a date certain and thereby avoid further charges; and

B. Any mandatory membership, enrollment, or usage fees (*e.g.*, monthly or hourly usage charges).

Provided, however, that for purposes of this paragraph III, a disclosure is "clearly and prominently" made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In addition to the foregoing, such disclosure shall not be avoidable by consumers. Provided, further, that such disclosure shall not be deemed avoidable for purposes of this order based solely on an ordinary consumer's failure to read it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

IV.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any consumer account, shall not:

A. Fail to obtain consumer authorization before initiating any Electronic Fund Transfer from any consumer account as required by Section 907(a) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a), and Section 205.10(b) of Regulation E, 12 CFR 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

B. Fail to provide any consumer with advance notice of Electronic Fund Transfers from the consumer's account varying in amount from previous transfers as required by Section 907(b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(b), and Section 205.10(d) of Regulation E, 12 CFR 205.10(d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

V.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for five (5) years after the last date of dissemination of any representation covered by paragraphs I - III of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying business records demonstrating compliance with the terms and provisions of this order, except as provided for in paragraph VI of this order, including, but not limited to:

A. All advertisements, promotional materials, and instructional materials distributed or accessible to consumers containing the representation;

B. For five (5) years after the date of receipt or generation, all written complaints from consumers, governmental or consumer protection organizations and responses thereto; provided, however, that in lieu of maintaining all electronic mail or similar communications, respondent may comply with this provision by maintaining a representative sample of such communications.

VI.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for two (2) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records which demonstrate respondent's compliance with paragraph IV of this order; provided, however, that in lieu of maintaining all electronic mail or similar communications, respondent may comply with this provision by maintaining a representative sample of such communications.

VII.

It is further ordered, That respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, senior managers (*e.g.*, vice-presidents or above), and agents (including, without limitation, advertising agencies) 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, and its successors and assigns, shall prepare a summary of this order, and shall distribute a copy of that summary to all current and future managers with responsibilities or duties affecting compliance with the terms of this order.

VIII.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, 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 dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or respondent-controlled subsidiary or respondent-controlled 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.

IX.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, 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.

X.

This order will terminate on March 16, 2018, 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.

Commissioner Azcuenaga not participating.

IN THE MATTER OF
COMPUSERVE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 907 OF THE ELECTRONIC FUND TRANSFER ACT, REGULATION
E AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3789. Complaint, March 16, 1998--Decision, March 16, 1998

This consent order prohibits, among other things, the Ohio-based Internet service provider from: misrepresenting the terms or conditions of any online service trial offer; or representing that online service is free or otherwise representing that consumers need not pay for the online service, unless any obligation to cancel or to take other action to avoid charges is disclosed clearly and prominently in the instructional materials, and all other advertisements include a statement directing consumers to where this disclosure is available.

Appearances

For the Commission: *Lucy Morris, David Medine, Nina Chang*
and *Steven Silverman*.

For the respondent: *Brian Dengler*, in-house counsel, Columbus,
OH.

COMPLAINT

The Federal Trade Commission, having reason to believe that CompuServe, Inc. ("CompuServe" or "respondent") has violated the provisions of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41-58, as amended, as well as the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693-1693r, as amended, and its implementing Regulation E, 12 CFR 205, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. CompuServe is an Ohio corporation with its principal office or place of business at 5000 Arlington Centre Boulevard, Columbus, Ohio.
2. CompuServe has developed, advertised, offered for sale, sold, and distributed to the public its online service for personal computer users. Through its online service, CompuServe provides consumers with a range of options including electronic mail, interactive magazines and newspapers, transactional services, and access to the Internet.

3. CompuServe has been and is now engaged in the regular practice of making "electronic fund transfer[s]" from "consumer" "account[s]" as those terms are defined in the EFTA and its implementing Regulation E.

4. The acts and practices of CompuServe alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act.

COMPUSERVE'S COURSE OF BUSINESS

5. CompuServe has disseminated or has caused to be disseminated advertisements for its online service through various media including, but not limited to, print, television, the Internet, direct mail, promotional materials, and instructional materials. These advertisements include, but are not limited to, the attached Exhibits A and B, which contain the following statements:

Exhibit A

Take a joy ride on the information superhighway! . . . Courtesy of your friends at CompuServe®. C'mon, your first 10 hours are FREE!

* * *

Hop on the information highway with CompuServe for 10 free hours of fun, news, games, live chat, entertainment, and lots more!

* * *

Get more out of life, work, and play -- and get 10 hours plus your first month's membership FREE!

* * *

Dear friend

[Y]ou can take a 10-hour free ride on that highway right now with CompuServe®. All you need is your computer, a modem, and the two free CompuServe disks included with this letter.

* * *

You really have nothing to lose. You've got everything you need right now. Your first month's membership is free. And during your first month, you and your family will have 10 free hours to explore CompuServe and the world of the Internet. If you decide that CompuServe isn't for you, you can cancel at any time with no obligation whatsoever.

The advertisement contains an insert card attached to which are two computer disks that permit access to CompuServe's online service. On the reverse side of this card, a bold-face statement provides:

Go now. Go fast. Go free.

To start enjoying your 10 free hours on CompuServe, use the two disks on the back of this card

A fine-print statement at the bottom of the card provides:

Please have your credit card ready. If you use more than ten hours during your first month's free membership, you will be billed \$2.95 per hour by CompuServe. Thereafter you will be billed \$9.95 per month for membership, plus \$2.95 for each hour after 5 hours.

Exhibit B

GET CONNECTED TODAY FOR FREE! COMPUSERVE CONNECTS YOU TO A WORLD OF EDUCATION, FUN, BUSINESS COMMUNICATION AND MORE.

* * *

CONNECT TO COMPUSERVE TODAY AND TRY VIRTUALLY EVERYTHING WE OFFER - ON US.

* * *

EXPLORE COMPUSERVE FOR ONE MONTH FREE!

For a monthly membership fee of \$9.95 US*, you and your family have access to a phenomenal world of education, entertainment and communication. And it's easy to begin. All you need is your home computer, your regular phone line and a modem. Plus, to help you get started, we'll give you one FREE month of membership (a \$9.95 US* value) plus 10 FREE* hours your first month to explore virtually everything we offer.

The advertisement contains a statement at the bottom of the final panel, in fine print, that provides:

*All pricing quoted in US dollars.

Some premium services carry additional charges. Communication surcharges may apply in some areas. Some mail services are not included within your 5 free hours. CompuServe is for use subject to the terms, operating rules and conditions found online.

6. Consumers choosing to participate in the free trial offer typically do so by connecting to the CompuServe service through a telecommunication modem attached to their personal computers. Upon their initial connection to the service, consumers view a series of registration screens including, but not limited to, the attached Exhibit C. The registration screens obtain identification and billing information from consumers, verify the consumers' user identification numbers and passwords, and provide basic information about the online service, including the following details about the terms of the free trial offer:

Exhibit C

10 FREE HOURS TO START.

To help you get started on CompuServe, we're giving you one free month of membership (a \$9.95 value) and 10 free hours during your first month to explore the services you choose. Surf the Internet..Send e-mail..Set up travel reservations. It's all completely up to you.

But what if you don't use all 10 hours your first month? Or what if you use more? No problem. Use as many or as little of your 10 hours as you want -- just be sure you use them within your first month (30 days) online. After that, they expire. If you do go over 10 hours, additional time is only \$2.95 US per hour.

The registration screen continues with basic membership terms including the monthly charges incurred by CompuServe members:

5 FREE HOURS A MONTH.

Then, if you choose to continue your membership (and we're certain you will!) you'll get 5 FREE hours each month. And -- starting at the beginning of your second month -- you'll pay a monthly membership fee of \$9.95 US. Remember that your hours can't be carried over to the next month. Additional online hours are only \$2.95 each.

COMPUSERVE'S VIOLATIONS OF SECTION 5(a) OF THE FTC ACT

7. Through the means described in paragraphs five and six, CompuServe has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within one month from their initial sign-on and do not exceed ten hours of online use.

8. In truth and in fact, consumers who participate in CompuServe's free trial offer and use less than ten hours of online time during the month following their initial sign-on, but who fail to cancel their memberships during the trial period, incur charges. Therefore, the representation set forth in paragraph seven was, and is, false or misleading.

9. In the advertising and sale of its online service, CompuServe has represented, expressly or by implication, that consumers who participate in its free trial offer will not be charged, provided only that they use the trial time within one month from their initial sign-on and do not exceed ten hours of online use. CompuServe has failed to disclose adequately to consumers that, upon completion of ten hours of online use or one month from the date of initial sign-on, whichever is earlier, consumers who fail to contact CompuServe and cancel their memberships are treated as members of CompuServe and are charged a monthly membership fee plus applicable hourly fees. These fees

continue to accrue until the consumers affirmatively cancel their memberships. Such facts would be material to consumers in their purchase or use of the CompuServe service. The failure to disclose these facts in light of the representation made was, and is, a deceptive practice.

COMPUSERVE'S VIOLATIONS OF SECTION 907 OF THE EFTA

10. In the course of the online registration process, consumers must select one of several payment options listed on a registration screen titled "Signup - Billing/Country." These options include credit and charge cards and a payment method referred to as "Direct Debit." CompuServe automatically debits the checking accounts of consumers choosing the Direct Debit option, but requires such consumers to sign and submit a written authorization form before debiting their accounts. Additionally, although CompuServe does not identify debit cards as a payment option, its payment system will process debit cards presented by consumers in place of credit cards. CompuServe does not, however, obtain written authorization under such a circumstance.

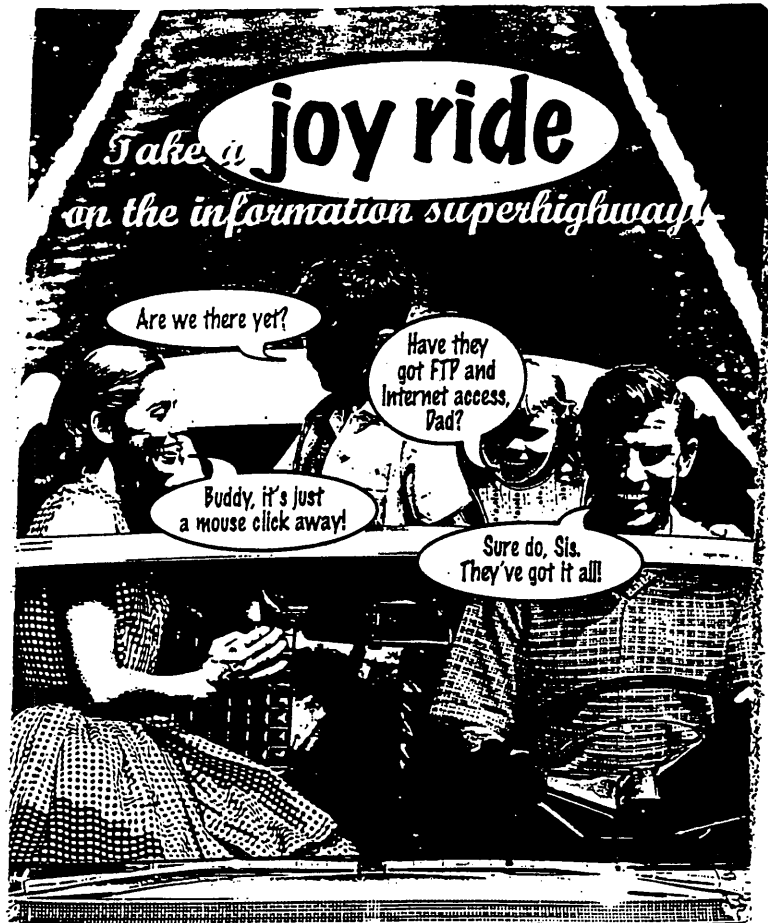
11. In the course and conduct of its business, CompuServe has debited consumers' accounts via their debit cards without their written authorization. In addition, in the course and conduct of its business, CompuServe in many instances has failed to provide consumers with advance written notice of transfers from their accounts varying in amount from previous transfers.

12. CompuServe's aforesaid practices violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.


13. The acts and practices of CompuServe 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. Such acts and practices additionally violate Sections 907(a) and (b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a) and (b), and Sections 205.10(b) and (d) of Regulation E, 12 CFR 205.10(b) and (d).

Commissioner Azcuenaga not participating.

EXHIBIT A



Courtesy of your friends at

 **CompuServe**

CompuServe, your first 10 hours are FREE!

Complaint

EXHIBIT A



**Hop on the information highway with CompuServe
for 10 free hours of fun, news, games, live chat,
entertainment, and lots more!**

Dear friend:

The information highway's filling up with exciting new ways to talk to friends, play games, shop, get information, and have fun!

And you can take a 10-hour free ride on that highway right now with CompuServe! All you need is your computer, a modem, and the two free CompuServe disks included with this letter.

When you go with CompuServe you'll be on the smoothest, easiest, and most breath-taking ride imaginable. That's because CompuServe is the world's premier online service.

With CompuServe you can —

- surf the internet and cruise the World Wide Web with the click of a button!
- get instant news, sports scores, and weather.
- review new movies before you take your family.
- exchange e-mail with over 3.6 million CompuServe members and millions more on the internet.
- join special interest groups for live online chat.
- save money on airfare and travel plans.
- manage your money more effectively.



**Get more out of life, work, and play —
and get 10 hours plus your first month's membership FREE!**

We've invited millions to join our member family. Over 3.6 million people from around the world have already signed up. Thousands more are joining every day.

And you're holding your membership invitation right now. Join us today, and you'll enjoy 10 free hours of access time — 5 free bonus hours plus 5 more hours during your first free month.

But that's just for starters. This special invitation also includes —

- FREE CompuServe Magazine — this monthly publication is packed with software reviews, computer news, and ideas for making the most of your membership.
- FREE New Member Guide — a handy reference booklet of tips on getting started with CompuServe.
- FREE Personalized Address — the service we bring to our 3,000 club members.



Complaint

125 F.T.C.

EXHIBIT A

Your 10 free hours, first month's membership, our monthly magazine, New Member Guide, and Directory of Services add up to a \$69.45 value. And these savings come with absolutely no strings attached: if you're not completely satisfied with CompuServe, you can cancel your subscription at any time. No questions asked!

No online service offers you more, for so little!

CompuServe is the one online service that you'll never outgrow. We say that because no other service — not Prodigy, not AOL, not Microsoft Network — can put so much at your fingertips.

Your CompuServe membership gives instant access to over 3,000 services. No matter what your interests, hobbies, occupation, or dreams — CompuServe can be there ... with information ... help from specialists ... and advice and ideas for members in 140 countries.

Something for every member of your family!

CompuServe has something for everyone. Whether it's to your home or your office, CompuServe delivers —



- **financial services** — Investing funds for college tuition or retirement? Do it yourself by accessing the same information that Wall Street brokers use every day. Check out corporate performance. Track your mutual funds. Talk to market analysts live. Even buy and sell via online brokers!
- **entertainment** — See how Roger Ebert rates the movies (and check their ratings and why they got them) before taking the family. Get the latest Hollywood gossip. Check up on your favorite TV soaps when you can't see them. See what's hot and what's not in the current issues of People Magazine and Rolling Stone. Talk to stars. Join a fan club. Preview music before you get that CD.
- **news** — Forget the morning paper, TV news, and all those subscriptions. You get the world's events as they happen with AP Online and CNN Online, dozens of newspapers, magazines like U.S. News and World Report, nationally acclaimed columnists, and more.
- **weather** — Get the complete weather picture for where you are now or where you're planning to go for business, vacation, or weekend trips. View continually updated satellite Accu-Weather® maps. Go online with the Weather Channel Forum!
- **reference** — Students can get the facts from Grolier's Academic American Encyclopedia, American Heritage Dictionary, Peterson's College Guide, and 1,000 databases. And professionals will find a vast range of business, financial, academic, scientific, and technical frames for making informed decisions about emerging opportunities, changing markets, and consumer trends.
- **Women's Wire** — Today's woman will find a whole new online service devoted exclusively to issues that affect her: career, health, family, relationships, and more.
- **zine** — It's time to get in touch with the rest of the world. Join family, friends, and a whole lot of new people around the globe. Meet and talk to the most interesting people online.



EXHIBIT A

- **sports** — For fans who need to know it all, CompuServe's got the latest scores and standings, news on who's been traded, the complete play-off picture, and in-between stories from Sports Illustrated online. It's all just seconds away.
- **shopping** — Avoid the crowds and packed parking lots. Shop The Electronic Mall and visit over 160 popular shops like Lands' End, Brooks Brothers, JCPenney, and Service Merchandise. Compare and save. Find the best bargain (and make the right choice with Consumer Reports).

No online service offers this much. It all adds up to an incredible value for you and your family. And it's all yours now for 10 hours free during your first month.

Unleash the potential of your home computer!

Is the newest version of Windows right for you? Should you buy it now or wait? You'll find the answers on CompuServe, along with free technical advice, shareware, software demos, bug fixes, and access to experts. Plus lots more.



A few mouse clicks is all it takes to get one-stop access to today's leading hardware and software companies. No more calling those always busy computer help lines. Just quick answers from technical representatives at IBM, Apple, Compaq, Aldus, Hewlett-Packard, Novell, WordPerfect, and many, many more — over 1,000 in all!

You can also share tips and techniques with pros in desktop publishing, graphics, multimedia, networking, and database Forum sites. Download and preview new software demos, get free shareware, cheaters for today's hot computer games like DOOM, Marathon, and Dark Forces. Access templates for page layouts, spreadsheets, and newsletters. We've got some 30,000 files in all! Available to you any time — day or night.

Make new friends and expand your horizons.

Thousands of people from around the world are chatting live on CompuServe right now! And they're discussing almost every imaginable topic ... crafts, fashion, and home decorating ... the latest computer games ... the hottest teams in sports ... the best cars. They're trading recipes, tips on gardening and crafts, and fashion trends. Discussing emerging markets and investment strategies. Searching for their family roots around the world.

If it's part of your world, you'll find it and someone to share it with on CompuServe! Today we have over 600 special interest Forum sites. And the number continues to grow as more people like you join our family.

Get on the Internet with the click of a button!

Once the world of computer "techniques," the Internet is now home to millions of everyday computer users. And thanks to CompuServe, the Internet neighborhood has become friendlier than ever.

That's because every CompuServe member has free access to our award-winning Internet services that make it so easy to get on the Internet. As a member of CompuServe, you'll have the most powerful, most reliable, and most user-friendly Internet gateway available to you. You'll be able to find out more about our services and how to get on the Internet.



Complaint

125 F.T.C.

EXHIBIT A

When you jump on the Internet with CompuServe, you and your family can easily exchange e-mail, download files, and access an incredible array of research materials. And you can do it all at no cost with your 10 free hours!

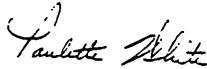
Getting started is easy — and help's just a free phone call away.

CompuServe is committed to making going online as easy as possible. Your two free sign-up disks come with easy to follow on-screen instructions to guide you through the install and sign-up process. If you have any problems at all, simply call 1-800-338-8823 for quick, friendly advice.

You really have nothing to lose. You've got everything you need right now. Your first month's membership is free. And during your first month, you and your family will have 10 free hours to explore CompuServe and the world of the Internet. If you decide that CompuServe isn't for you, you can cancel at any time with no obligation whatsoever.

Why wait another minute? Put your free sign-up disks in your computer and hit the "Info Highway" today!

Sincerely,



Paulette White
Vice President
Marketing Communications

P.S. This special offer of 10 FREE hours and first month's membership to CompuServe is available exclusively to new members and comes with no obligation to buy anything. If you are already a member, why not pass this special offer along to a friend?

Complaint

EXHIBIT A

Go now. Go fast. Go free!
So start enjoying your 10 free hours on CompuServe, use the two disks on the back of this card and follow these simple instructions:

- 1 Place WHICM disk 1 in your computer's A: or B: disk drive.
- 2 From Windows Program Manager, select Run from the File menu and enter "A:SETUP" (or B:SETUP).
Note: For Windows 3.11, select Run from the Start button menu and enter "A:SETUP" (or B:SETUP).
- 3 Follow the on-screen prompts, paying special attention to the those related to "Winsock" (this is what your computer recognizes as your Internet connection).
- 4 Install disk 2 when prompted.
- 5 To complete installation, follow the remaining on-screen instructions.

When signing up, you will be asked to enter the following information:

AGREEMENT NUMBER: XXXX99
 SERIAL NUMBER: 9999999



The information you provide on these disks is used to help you get the most out of your CompuServe account. We will never give your information to anyone else. If you have any questions, please call 1-800-336-6423.

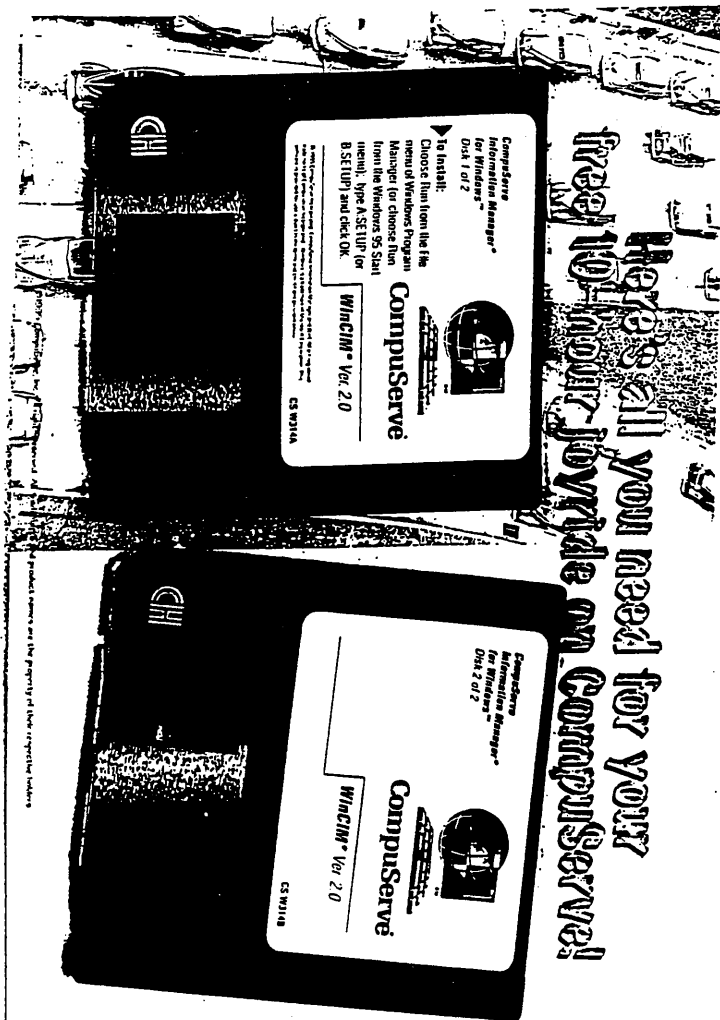
John Q. Sample
123 Anywhere St.
Anytown, US 12345-6789

What's all there to it. After getting started up, you can click the CompuServe icon to get online, you'll need a connection and Internet Web browser and just in case you don't have a direct Internet button hit right on the CompuServe menu.

Questions about getting started?
Call 1-800-336-6423.



EXHIBIT A



*Product names are the property of their respective holders.

EXHIBIT A



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EXHIBIT A

We've got a world of fun for everyone!

No online service has more to offer you — and every member of your family — than CompuServe®. No matter what your age or how big your family is — you'll find an incredible variety of things to do and see when you go online with us.

We make getting started easy. And once you're online, you'll find that getting around is easy too. And in this handy Cyberguide, you'll find some useful tips about installing your free CompuServe software, using the service, and "surfing" the internet.

You'll also find some useful phone numbers for getting help, as well as facts, trivia, and bits of info you may find useful as you begin exploring Cyberspace with CompuServe. So keep it handy when you're ready to hop online!

First things first.

1. Install your software. Your free software disks are attached to a "disk carrier card" that includes easy-to-follow steps for

installing your CompuServe software. During the installation process, you'll be walked through a series of screens and asked to enter your name, address, phone number, and other information. You can press the "F1" key on your keyboard at any time for information and hints about each screen.

2. Sign up to become a member of CompuServe. After installing the software, you can click on the "Sign Me Up" button when asked or click on the "Membership Sign Up" icon on your computer's desktop. You can always press the "F1" key for helpful hints on the sign-up process. At this point, you'll need the Agreement Number and Serial Number listed on the disk carrier card. Enter the appropriate information when prompted.

If you have any questions at all or need additional help, feel free to call 1-800-336-6623.

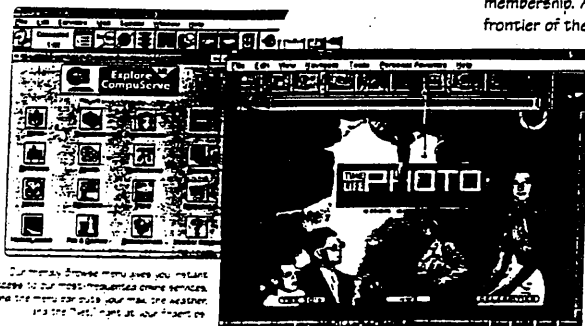
3. Go online. You're now ready to connect to CompuServe. Just double-click the CompuServe Information Manager icon to begin. Then click the "Connect" button. The software does the rest. It's that easy.

EXHIBIT A

Start exploring!

As a new member you'll find an assortment of useful menus and shortcuts for getting around CompuServe, exploring the Internet, and finding help when you need it.

Our Browse menu can take you to some of our most popular spots at the click of the mouse. And for a quick intro to CompuServe, nothing beats the Welcome Center, which you can access by clicking on the Go (Traffic Light) icon and typing in "Welcome" for instant access to user tips, the Help Forum, and more.



Our Browse menu gives you instant access to our most popular online services, and the menu can take you to the weather and the Traffic Light at your request.

Surfing the Internet

Internet traffic is skyrocketing. You can find out why by going online with CompuServe. We make it incredibly easy for you to "surf" the Internet by giving one-button access with our built-in World Wide Web browser.*



With just a little practice, you can be trading pics and info with folks from down under, across the Atlantic, or down the block.

So open up your eyes (and ears) to the world waiting on CompuServe. Take advantage of your 10 free hours and first month's free membership. And start exploring the new frontier of the Internet.

Our built-in Web browser makes getting around the Internet remarkably easy. Search, go forward or back, zoom in, and more with the handy menu bar buttons.

*The Internet Web browser is available only to CompuServe members who have purchased the appropriate software. See CompuServe's member guide for details.

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EXHIBIT A



Hey, what's that mean?

The computer revolution and the rush to Cyberspace has brought with it an almost unending list of special terms and its own private lingo. Making sense of this new vocabulary can be tough, here's a run-down of some of the more common terms and what they mean.

Browser — a software program that lets you surf and navigate to the Internet and makes it easy for you to navigate the World Wide Web. Commonly used to refer to Netscape or the just named SPIN Web browser.

Cyberspace — the area you visit when you log on to your computer's modem and surf. It's made up of a vast network of linked computers and networks. World Wide Web and online services are part of the term "Cyberspace" and linked by the Internet.

E-mail — short for electronic mail, it's how people exchange their digital computer messages. It's the e-mail service of the Internet.

Forum — any one of the more than 100 newsgroups, areas or CompuServe.

Freeware — software available free of charge. You'll find freeware in CompuServe's member files area and in the Internet.

FTP — short for File Transfer Protocol, which is a standardized text-based method for getting electronic files over the phone lines from one computer to another.

FAQ — short for Frequently Asked Questions, FAQs are generally found in online resources areas in CompuServe Forum files and online services at all times.

Homepage — a website for displaying and presenting information that includes text, text, graphics and interactive sound and images — and which allows users to browse for "surf" through a series of interconnected pages. Users determine how they move through a website by clicking on a hot link, image, or button and can take them immediately to the next web page or to other resources.

Internet — most accurately a "network of networks," the Internet is made up of over 25,000 interconnected networks. Originally established in 1969 when Defense Department researchers used computers at four American universities, the Internet has become the world's largest research and development network.

Library — a specific "database" or collection of the information gathered by a certain individual, or an organization. The quality of libraries varies widely and with CompuServe you can find and maintain a copy of your favorite sites for easy future access.

Shareware — copyrighted software that's distributed free of charge but which usually requires a request for "free" to cover the cost of development and distribution. You'll find a lot of shareware on CompuServe as well as on the Internet.

WWW — short for CompuServe Information Manager for Windows.

World Wide Web — the hypertext, hypermedia-based portion of the Internet used for browsing; often shortened to WWW.

Frequently called numbers

Need help installing your software?
Call 1-800-336-6823

Need a different format for installation piece?
Call 1-800-368-3343

Need to reach Customer Service?
Call 1-800-848-8990



Complaint

EXHIBIT A

Why CompuServe?

There are literally dozens of online services and internet providers to choose from. You're probably wondering which one is right for you. Or maybe you think that they're all pretty much alike.

You should take a chance. Or you could go with a proven leader — CompuServe. Our premier status is based on facts, not a lot of hype. CompuServe gives you —

- > more members worldwide than any other service that includes Prodigy and AOL.
- > more services — more than 3,000 in all.
- > professional databases — over 1,000!
- > Net browser — CompuServe's exclusive Net browser comes built-in.
- > support for 28.8 speed modems; most services offer only up to 14.4 for faster, more economical file downloading and image retrieval.
- > support for Windows 95, Windows 3.1, Macintosh, OS/2, and OS/2.
- > toll-free telephone support.
- > free monthly CompuServe Magazine for members.



"Sincerely Yours" Cyberstyle

Users frequently enter their e-mail notes with a combination of keyboard characters depicting how the writer feels. (Think of your nose to the left when reading them to get the visual you.) These are taken from "The Shortform Emoticon Dictionary" which you can find on CompuServe.

- Smiling - Crying - Tongue Out - OUCH
- Winking - Happy and Crying - Surprised - Laughing
- Rolling - Screaming - Kiss Me - Oh Darn

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EXHIBIT A



A-15

EXHIBIT A

That's one of the first questions people ask when they hear about our new member offer. But frankly we can't think of a better way of introducing you to everything CompuServe has to offer.

With so many services and so many things to do, you could spend hundreds of hours online with CompuServe and still have plenty left to explore. And while we can't offer you unlimited free access, your 10 free hours and first month's free membership will give you a good idea if CompuServe is right for you.

If CompuServe isn't what you're looking for, no problem. You can cancel at any time — no questions asked. I guarantee it.



Tom Sullivan
Director, Customer Promotions
CompuServe

EXHIBIT A

I can't wait to join the Sports & Math League! There'll be medals, trophies and lots of fun at each event!

What Street watch will How I can be my own banker.

I can see down the path on vacation, you'll even receive for all the friends!

Oh boy, now I can play games and get free money!

WOW!

That's just the start. Come on inside!

10 hours of FREE fun for the whole family.

Free disks and details inside.

EXHIBIT B



GET **CONNECTED** TODAY

FREE!

COMPUSERVE
CONNECTS YOU
TO A WORLD
OF EDUCATION,
FUN, BUSINESS
COMMUNICATION
AND MORE.

OVER 3,000 SERVICES INCLUDING THE INTERNET

The advertisement features a central graphic of a globe with a computer keyboard in front of it. The text is arranged around and below the graphic. At the top, 'GET CONNECTED TODAY' is written in a curved banner. To the right, 'FREE!' is written in a black box. The main body of text is centered and reads 'COMPUSERVE CONNECTS YOU TO A WORLD OF EDUCATION, FUN, BUSINESS COMMUNICATION AND MORE.' At the bottom, a small line of text states 'OVER 3,000 SERVICES INCLUDING THE INTERNET'.

Complaint

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EXHIBIT B



GET **CONNECTED** TODAY

FREE!

COMPUSERVE
CONNECTS YOU
TO A WORLD
OF EDUCATION,
FUN, BUSINESS,
COMMUNICATION
AND MORE.

Complaint

EXHIBIT B

EXPLORE COMPUSERVE FOR ONE MONTH FREE!

For a monthly membership fee of \$9.95 US, you and your family have access to a phenomenal world of education, entertainment and communication. And it's easy to begin. All you need is your home computer, your regular phone line and a modem. Plus, to help you get started, we'll give you one **FREE** month of membership (a \$9.95 US* value) plus 10 **FREE*** hours your first month to explore virtually everything we offer. After that, you receive 5 **FREE*** hours each month to try nearly 3,000 products and services.* And additional online time is just \$2.95 US* per hour. Try any of our forums...Surf the Internet and the World Wide Web...Send e-mail... Check out the weather...Set up travel reservations. It's all wide open. And all completely up to you.

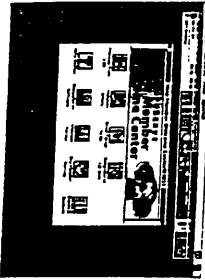
Complaint

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EXHIBIT B

WELCOME TO COMPUSERVE.

Be sure to drop by the New Member Welcome Center — a nice first stop on your trip online. Click on the GO (trailing right) button and enter WELCOME to get there.



SHOW IT WITH ELECTRONS.


Get your message across in no time, the next to nothing at all. Because basic e-mail and CD are both included within your fees here. So next time you have something to say, go on Compuserve and say it with electrons.

SOUP THE WEB ON THE INTERNET.

You've probably heard of Internet and the Web. Maybe you think they have a bit in common, but you're afraid to connect. And if you do connect, how do you find your way around? With Compuserve, it's all easy. We let you explore everything the "Net" and the "Web" offer, just point and click.

FIND YOUR OWN PLACE.

Want to meet people like you? How about people like you've never met before? Where are you and whatever you're looking for, you'll find it in our forums areas. They're where people go to talk about issues. Meet with friends. Or find the answers to questions. So whether you're into home improvement or home business, you'll find a place for you and your family.



COMPUSERVE, INC.

Complaint

EXHIBIT B

A GOOD WAY WHEN YOU FLY.

On CompuServe, you, your business and your family can plan your next big trip with the same information travel agents use. You can book your own flights, hotels, rental cars, and the lowest available airfares. Then, get your tickets by mail, at the airport, or from your travel agent. You can even book your reservation anytime of the day or night and have a rental car ready upon arrival at your destination.

GET THE MOST OUT OF YOUR COMPUTER.

CompuServe helps you make the most out of your personal computer. You can download the latest software and get the on how to use it from over 1,000 hardware and software companies. Find what's hot in hardware, even discuss upcoming advances with other members. All with the click of your mouse. And all on CompuServe.

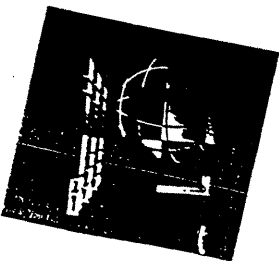
MAKE YOUR BUSINESS MAKE MORE SENSE.

CompuServe can help you take it easy at retirement or take the lead in business. Our current stock quotes give you the latest movements in the bond in business. Our current multiple calculator to calculate payments on stock, options and mutual funds. You can see with people who have similar goals. You can even get advice from financial experts in our forums. It's all online. On CompuServe.

AND THAT'S ONLY THE BEGINNING...

CompuServe doesn't give you and your family more to do and discover. But that's not all. You can do it by us yourself. Simply put the enclosed software package in Windows, MS-DOS and Macintosh format in your computer. Start it up, and enter the 587-up numbers on the outside of the package you saw for yourself. The fun, education, entertainment, as well as business services available on CompuServe, you'll wonder how you ever got along without it.


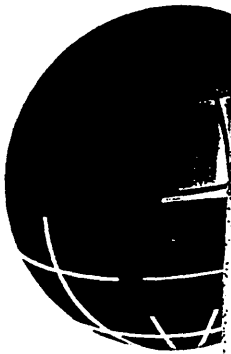

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EXHIBIT B



 **CompuServe**
AN H&R BLOCK COMPANY

World headquarters in Columbus, Ohio, USA
800-848-8990 or 614-529-1340

Offices also in Bristol, UK 0800 289456 or (+44) (117)978 0680;
Paris, France 36-63-81-31 or (+33)(1) 4714 2160; Munich,
Germany 0130 86 46 43 or (+49) (89)66 535-222; and Argentina,
Australia, Chile, Hong Kong, Hungary, Israel, Japan, Mexico,
New Zealand, South Africa, South Korea, Taiwan, and Venezuela.

Have questions? If you need help signing up to CompuServe, call us
toll-free at 800-328-6822. Outside the United States and Canada call
(+1) (614) 529-1340.

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Printed in USA

Complaint

EXHIBIT B

**CONNECT TO COMPUSERVE TODAY
AND TRY VIRTUALLY EVERYTHING
WE OFFER - ON US.**

**TO GET
CONNECTED TODAY:**

Install the software.
Instructions are on
the disk.

Click on the membership
Sign-Up icon and follow
the step-by-step
directions.

Enter the Agreement
Number and Serial
Number listed here
when prompted.

Account Number:	CP9331
Serial Number:	225731905

*If your software is missing or is not compatible
with your computer...*

Please call: 800-487-0453

*Ask for:
Software Exchange
Representative*



The information service you won't outgrow.
World headquarters in Columbus, Ohio, USA

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Printed in U.S.A.
13-47724-7999

2-7

EXHIBIT C

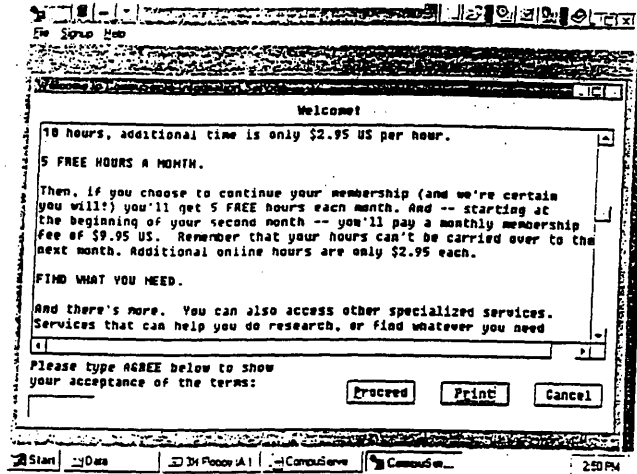


Exhibit C-1

Complaint

EXHIBIT C

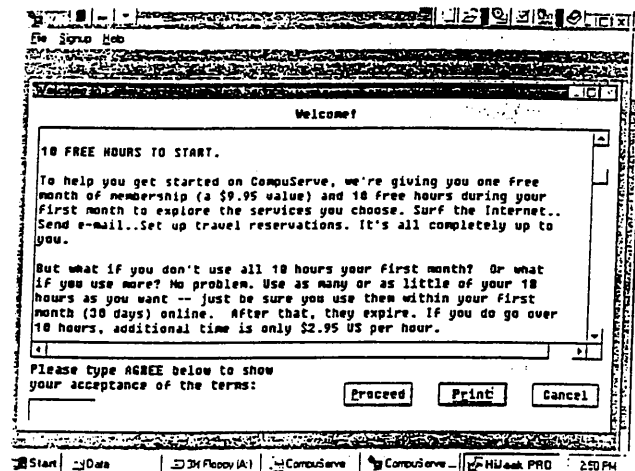


Exhibit C-2

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 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 the respondent with violation of the Federal Trade Commission Act and the Electronic Fund Transfer Act and its implementing Regulation E; and

The respondent, its attorneys, and counsel for the 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 the 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 Acts and Regulation, 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 sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent CompuServe, Inc. is an Ohio corporation with its principal place of business or office at 5000 Arlington Centre Boulevard, Columbus, Ohio.
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 terms shall have the meanings set forth below, unless specifically stated otherwise:

1. "*Account*" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution, as defined below, and established primarily for personal, family, or household purposes.

2. "*Financial institution*" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer.

3. "*Consumer*" means a natural person or other entity that may be billed for online services; provided that, for purposes of paragraphs IV and VI of this order, "consumer" shall only mean a natural person.

4. "*Electronic Fund Transfer*," as defined by the Electronic Fund Transfer Act, 15 U.S.C. 1693a(6), means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account, except that it does not mean a transaction made using a debit card or debit card account which a consumer has identified as a credit card or credit card account.

5. "*Online Service*" shall mean a respondent-controlled access, information, communication, or transaction service which is made available to consumers as a paid service via connection by computers, modems, or other means, to a proprietary or non-proprietary network of telecommunication or computer facilities.

6. Unless otherwise specified, "*respondent*" shall mean CompuServe, Inc., its successors and assigns, and its officers, agents, servants, divisions, and employees.

7. "*Respondent-controlled*" shall mean respondent makes the management decisions affecting compliance with the provisions of this order.

8. "*In or affecting 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 respondent-controlled corporation, subsidiary or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not misrepresent, expressly or by implication, the terms or conditions of any trial offer of any Online Service.

II.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any Online Service in or affecting commerce, shall not represent, expressly or by implication, that the Online Service is offered "free," "without risk," "without charge," "without further obligation," or words of similar import denoting or implying the absence of any obligation on the part of the recipient of such offer to pay for the Online Service unless respondent discloses clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service.

Provided, that for purposes of this paragraph II, "clearly and prominently" shall mean with respect to any representation, described in the foregoing paragraph and made in respondent's detailed instructional materials (*e.g.*, starter kits, guidebooks) distributed to consumers, a disclosure in a type size and in a location that are sufficiently noticeable so that an ordinary consumer could notice, read, and comprehend it.

Provided, further, that for purposes of this paragraph II, "clearly and prominently" shall mean, as to any representation described above in this paragraph, apart from any representation covered by the preceding proviso, and made in the context of any advertisement or promotion of the Online Service through any media, including radio, television or other broadcast media, direct mail, interactive network (except as provided in paragraph IV below), or print media (including promotion packages attached thereto), a statement directing consumers to a location where the disclosure required herein will be available (*e.g.*, "For conditions and membership details," followed by: "load up trial software" or "see registration process" or words of similar effect.) In the case of an audio statement, the statement shall be delivered in a volume and cadence sufficient for an ordinary

consumer to notice, hear, and comprehend it. In the case of a video statement, the statement shall be of a size and shade and shall appear for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In the case of print media, the statement shall be in a type size and in a location sufficient for an ordinary consumer to notice, read, and comprehend it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

III.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with the advertising, promotion, offering for sale, sale, distribution of, or billing for any Online Service in or affecting commerce, shall disclose, clearly and prominently, during the final registration process, and prior to the consumer incurring any financial obligation or financial liability to respondent, the terms of all mandatory financial obligations to respondent which will be incurred by the consumer as a result of using such Online Service, including but not limited to the following:

A. The financial terms and conditions of any plan or practice (e.g., trial offer) by which consumers enroll in or renew enrollment in such Online Service and by which, accordingly, respondent charges the consumer; provided, that if such plan or practice exists, respondent must also disclose clearly and prominently any obligation of the recipient to cancel or take other affirmative action to avoid charges for use of the Online Service and provide at least one reasonable means by which the consumer may effectively cancel his or her enrollment by a date certain and thereby avoid further charges; and

B. Any mandatory membership, enrollment, or usage fees (e.g., monthly or hourly usage charges).

Provided, however, that for purposes of this paragraph III, a disclosure is "clearly and prominently" made if it is of a size and shade, and appears for a duration sufficient for an ordinary consumer to notice, read, and comprehend it. In addition to the foregoing, such disclosure shall not be avoidable by consumers. Provided, further,

that such disclosure shall not be deemed avoidable for purposes of this order based solely on an ordinary consumer's failure to read it.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be permitted.

IV.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, in connection with any Electronic Fund Transfer from any consumer account, shall not:

A. Fail to obtain consumer authorization before initiating any Electronic Fund Transfer from any consumer account as required by Section 907(a) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(a), and Section 205.10(b) of Regulation E, 12 CFR 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

B. Fail to provide any consumer with advance notice of Electronic Fund Transfers from the consumer's account varying in amount from previous transfers as required by Section 907(b) of the Electronic Fund Transfer Act, 15 U.S.C. 1693e(b), and Section 205.10(d) of Regulation E, 12 CFR 205.10(d), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 CFR 205, Supp. I.

V.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for five (5) years after the last date of dissemination of any representation covered by paragraphs I - III of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying business records demonstrating compliance with the terms and provisions of this order, except as provided for in paragraph VI of this order, including, but not limited to:

A. All advertisements, promotional materials, and instructional materials distributed or accessible to consumers containing the representation;

B. For five (5) years after the date of receipt or generation, all written complaints from consumers, governmental or consumer protection organizations and responses thereto; provided, however, that in lieu of maintaining all electronic mail or similar communications, respondent may comply with this provision by maintaining a representative sample of such communications.

VI.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, shall, for two (2) years after the date of issuance of this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all business records which demonstrate respondent's compliance with paragraph IV of this order; provided, however, that in lieu of maintaining all electronic mail or similar communications, respondent may comply with this provision by maintaining a representative sample of such communications.

VII.

It is further ordered, That respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, senior managers (*e.g.*, vice-presidents or above), and agents (including, without limitation, advertising agencies) 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, and its successors and assigns, shall prepare a summary of this order, and shall distribute a copy of that summary to all current and future managers with responsibilities or duties affecting compliance with the terms of this order.

VIII.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, 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 dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a parent or respondent-controlled subsidiary or respondent-controlled 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.

IX.

It is further ordered, That respondent, directly or through any respondent-controlled corporation, subsidiary, or other device, 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.

X.

This order will terminate on March 16, 2018, 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.

Commissioner Azcuenaga not participating.

IN THE MATTER OF

RECKITT & COLMAN PLC

SET ASIDE ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3306. Consent Order, Sept. 26, 1990--Set Aside Order, Mar. 24, 1998

This order reopens and sets aside a 1990 consent order with Reckitt & Colman, (113 FTC 827), thus removing the Commission's prior approval requirement for acquiring the assets of or the rights related to any rug cleaning product businesses in the United States.

ORDER SETTING ASIDE ORDER

On December 5, 1997, Reckitt & Colman plc ("R&C"), the respondent named in the above-referenced consent order ("order") issued by the Commission on September 26, 1990, filed its Petition to Reopen and Modify Consent Order ("Petition") in this matter. R&C asks that the Commission reopen and modify the order pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51, and consistent with the Statement of Federal Trade Commission Concerning Prior Approval and Prior Notice Provisions, issued on June 21, 1995 ("Prior Approval Policy Statement").¹ The Petition requests that the Commission reopen and modify the order to eliminate the prior approval provision set forth in paragraph V of the order, or, in the alternative, substitute a prior notification requirement for the prior approval requirement. The thirty-day public comment period on the Petition ended on January 13, 1998. No comments were received. For the reasons discussed below, the Commission has determined to grant R&C's Petition.

The complaint in this matter alleges that R&C's agreement with American Home Products Corporation ("AHP") to acquire the Boyle-Midway Division of AHP violated Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by lessening competition and tending to create a monopoly in the rug cleaning products business in the United States.²

¹ 60 Fed. Reg. 39,745-47 (Aug. 3, 1995); 4 Trade Reg. Rep. (CCH) ¶ 13,241.

² Complaint ¶¶ IV, V, and VI.

The order required R&C to divest "R&C's Assets to be Divested," as defined in paragraph I.I of the order.³ On December 4, 1990, the Commission approved R&C's application to divest the "R&C's Assets to be Divested" to Joh. A. Benckiser GmbH. Under the order, R&C is prohibited for a ten-year period from acquiring without the prior approval of the Commission any stock or related assets of any concern engaged in the "rug cleaning products business" in the United States.⁴

The Commission, in its Prior Approval Policy Statement, "concluded that a general policy of requiring prior approval is no longer needed," citing the availability of the premerger notification and waiting period requirements of Section 7A of the Clayton Act, commonly referred to as the Hart-Scott-Rodino ("HSR") Act, 15 U.S.C. 18a, to protect the public interest in effective merger law enforcement.⁵ The Commission announced that it will "henceforth rely on the HSR process as its principal means of learning about and reviewing mergers by companies as to which the Commission had previously found a reason to believe that the companies had engaged or attempted to engage in an illegal merger." As a general matter, "Commission orders in such cases will not include prior approval or prior notification requirements."⁶

The Commission stated that it will continue to fashion remedies as needed in the public interest, including ordering narrow prior approval or prior notification requirements in certain limited circumstances. The Commission said in its Prior Approval Policy Statement that "a narrow prior approval provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for the provision, attempt the same or approximately the same merger." The Commission also said that "a narrow prior notification provision may be used where there is a credible risk that a company that engaged or attempted to engage in an anticompetitive merger would, but for an order, engage in an otherwise unreportable anticompetitive merger."⁷ As explained in the Prior Approval Policy Statement, the need for a prior notification requirement will depend on circumstances such as

³ Order ¶¶ I.I and II.

⁴ Order ¶ V.

⁵ Prior Approval Policy Statement at 2.

⁶ *Id.*

⁷ *Id.* at 3.

the structural characteristics of the relevant markets, the size and other characteristics of the relevant markets, the size and other characteristics of the market participants, and other relevant factors.

The Commission also announced, in its Prior Approval Policy Statement, its intention "to initiate a process for reviewing the retention or modification of these existing requirements" and invited respondents subject to such requirements "to submit a request to reopen the order."⁸ The Commission determined that, "when a petition is filed to reopen and modify an order pursuant to . . . [the Prior Approval Policy Statement], the Commission will apply a rebuttable presumption that the public interest requires reopening of the order and modification of the prior approval requirement consistent with the policy announced" in the Statement.⁹

The presumption is that setting aside the general prior approval requirement of paragraph V is in the public interest. There is no evidence in the record that suggests that this matter presents any of the circumstances identified by the Prior Approval Policy Statement as appropriate for retaining a narrow prior approval provision, nor is there any indication of the circumstances that would warrant the substitution of a prior notice provision for the prior approval provision. There is nothing to suggest that the respondent would attempt the same or essentially the same merger that gave rise to the original complaint. In addition, it appears likely that future mergers within the relevant market would be HSR reportable. R&C completed the divestiture required by the order. Nothing to overcome the presumption having been presented, and because the only remaining obligation under the order is the prior approval requirement in paragraph V and the attendant reporting requirements, the Commission has determined to reopen the proceeding in Docket No. C-3306 and set aside the order.

Accordingly, *It is hereby ordered*, That this matter be, and it hereby is, reopened, and that the Commission's order issued on September 26, 1990, be, and it hereby is, set aside as of the effective date of this order.

⁸ *Id.* at 4.

⁹ *Id.*