

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,
Plaintiff,

v.

STAPLES, INC.,
a corporation,
Defendant.

CIVIL ACTION NO.

COMPLAINT FOR CIVIL
PENALTIES AND
INJUNCTIVE
AND OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission”), for its complaint alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain monetary civil penalties and injunctive and other relief for Defendant’s violations of the Commission’s Trade Regulation Rule Concerning the Sale of Mail or Telephone Order Merchandise (the “Mail Order Rule” or the “MTOR”), 16 C.F.R. Part 435; and injunctive and other relief for violations of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

3. Venue in the District of Massachusetts is proper under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b-c) and 1395(a).

THE DEFENDANT

4. Defendant Staples, Inc. is a Delaware corporation with its principal office or place of business located within the District of Massachusetts at 500 Staples Drive, Framingham, MA 01702. Staples, Inc. (“Defendant”) transacts business in the District of Massachusetts.

COMMERCE

5. At all times material to this complaint, Defendant’s course of business, including the acts and practices alleged herein, has been and is in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S COURSE OF CONDUCT

Defendant’s Delivery Representations

6. Defendant sells office supplies, furniture, technology products, and other items to consumers and businesses throughout the United States. Defendant sells these products at retail establishments and through a catalog, over the telephone, and via the Internet.

7. In the course of soliciting orders for merchandise by mail, telephone, and the Internet, Defendant has routinely promised customers that it will deliver merchandise in an express period of

time. For example, Defendant promises one-day delivery for numerous items. Other products are promised for delivery in one to three days, one to seven days, seven to fourteen days, and other periods of time.

8. Prior to May 4, 2002, on its www.staples.com website, Defendant made “one day” delivery representations to all United States customers who viewed the website. *See, e.g.*, Exhibits A, B, and C. Defendant’s policy, however, is to deliver products in one day only to those customers who live within one of Defendant’s “local trading areas” (described on Defendant’s website as those areas within approximately 20 miles of a Staples store). *See* Exhibit D.

9. Defendant made the one-day delivery representations on its website twenty-four hours a day, seven days a week. Defendant’s policy, however, is to deliver products that are promised for one-day delivery in one *business* day. Customers ordering items on Fridays, for example, did not receive their orders in “one day.” *See* Exhibit D.

10. On its website, Defendant described these limitations to its one-day delivery promises only in a hyperlink that was not clear and conspicuous. Defendant did not label or describe the hyperlink as containing important information that limited its delivery representations. *See, e.g.*, Exhibits B and C. Moreover, this hyperlink did not appear each time Defendant made one-day delivery representations to customers. Thus, customers could purchase products from Defendant via its web site without viewing those limitations.

Defendant’s Practices Regarding Delayed Orders

11. In numerous instances, Defendant did not ship merchandise in time for delivery within the times promised.

12. When Defendant did not deliver merchandise within the promised times, Defendant did not always notify customers of the delay. In addition, prior to May 4, 2002, when Defendant did notify customers of delays, Defendant did not explicitly offer customers an option either to consent to the delay or to cancel their orders. Furthermore, when Defendant failed to offer customers the option to consent to delays or to cancel their orders, Defendant failed to deem their orders cancelled.

Defendant's Real-Time Inventory Representation

13. First-time visitors to Defendant's website are required to submit their U.S. ZIP code before they can browse the website for items to purchase. Defendant's website states, "To view real-time inventory availability, please enter the ZIP code where products will be shipped." *See* Exhibit E.

14. Prior to May 4, 2002, customers who entered their ZIP code on Defendant's website as requested did not actually view Defendant's real time inventory. The website was not updated in real time. When a customer entered his or her ZIP code, the website eliminated from view only those items that Defendant never shipped to that ZIP code, such as furniture. The customer, however, may have seen items that Defendant usually carried but that were out of stock at that time and were not designated as out of stock.

COUNTS

Section 5 of the Federal Trade Commission Act

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

COUNT I: Deceptive Advertising

16. In numerous instances, Defendant has represented, expressly or by implication, that visitors to Defendant's website at www.staples.com can view, in real time, Defendant's inventory of

items available for purchase.

17. In truth and in fact, visitors to Defendant's website at www.staples.com prior to May 4, 2002 could not view, in real time, Defendant's inventory of items available for purchase, because Defendant did not update its website in real time.

18. Therefore, the representation set forth in Paragraph 16 was, and is, a deceptive act or practice in violation of Section 5 of the FTC Act.

The Mail Order Rule

19. The Mail Order Rule was promulgated by the Commission on October 22, 1975, under the FTC Act, 15 U.S.C. § 41 et seq., and became effective February 2, 1976. The Commission amended the Rule on September 21, 1993, under Section 18 of the FTC Act, 15 U.S.C. § 57a, and these amendments took effect on March 1, 1994. The Mail Order Rule applies to orders placed by mail, telephone, facsimile transmission, and on the Internet.

COUNT II: Defendant's Violations of the Mail Order Rule

20. At all times material hereto, Defendant has engaged in the sale of merchandise ordered by mail, telephone, or on the Internet.

21. In numerous instances, Defendant has represented, expressly or by implication, that it would ship merchandise in time for delivery within one day.

22. In numerous instances, Defendant has violated Section 435.1(a)(1) of the Mail Order Rule by soliciting mail, telephone, or Internet orders for merchandise for one-day delivery when Defendant had no reasonable basis to expect it would be able to ship some or all of such merchandise to certain buyers in time for delivery within one day. Those customers included buyers who placed orders for delivery to locations more than 20 miles from one of Defendant's retail stores, and buyers

who placed orders on Fridays and Saturdays.

23. In numerous instances, after having solicited mail, telephone or Internet orders for merchandise and received “properly completed orders,” as that term is defined in Section 435.2(d) of the Mail Order Rule, 16 C.F.R. § 435.2(d), and having been unable to ship some or all of the ordered merchandise to the buyer within the Mail Order Rule’s applicable time, as set out in Section

435.1(a)(1) of the Mail Order Rule, 16 C.F.R. § 435.1(a)(1) (the “applicable time”), Defendant has:

a. Violated Section 435.1(b)(1) of the Mail Order Rule by failing to offer to the buyer, clearly and conspicuously and without prior demand, an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund; and

b. Having failed within the applicable time to ship or to offer the buyer the option to either consent to a delay in shipping or to cancel the buyer’s order and receive a prompt refund, violated Section 435.1(c)(5) of the Mail Order Rule by failing to deem the order canceled and to make a prompt refund to the buyer.

24. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Mail Order Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). Therefore, Defendant’s failure to comply with the provisions of the Mail Order Rule, 16 C.F.R. Part 435, was, and is, an unfair or deceptive act or practice.

CIVIL PENALTIES AND INJUNCTIVE RELIEF

25. Defendant has violated the Mail Order Rule as described above in Paragraphs 20 to 24 with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

26. Each sale or attempted sale, during the five years preceding the filing of this complaint, in which Defendant has violated the Mail Order Rule in one or more of the ways described above,

constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

27. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Mail Order Rule.

28. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against Defendant's violating the FTC Act.

PRAYER

WHEREFORE, Plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), and 53(b), and to the Court's own equitable powers to:

- (1) Enter judgment against Defendant and in favor of Plaintiff for each violation alleged in this complaint;
- (2) Award Plaintiff monetary civil penalties from Defendant for each violation of the Mail Order Rule;

- (3) Permanently enjoin Defendant from violating the Mail Order Rule;
- (4) Permanently enjoin Defendant from violating the FTC Act; and
- (5) Award Plaintiff such additional relief as the Court may deem just and proper.

DATED:

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