

From: Eli Mantel, 4158 Middlefield Road, Palo Alto, CA 94303
To: FTC, Office of the Secretary, 600 Pennsylvania Ave NW, Washington, DC 20580
Re: Proposed Consent Decrees: Value America, Buy.Com, Office Depot

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In dealing with the issues raised by the advertising that is the subject of these complaints, the FTC's goal should be to design rules that will prohibit the use of the techniques that caused them to be deceptive, misleading, or otherwise confusing to consumers. The guiding principle should be that the FTC rules require advertised offers to be substantially what they appear to be.

Here are the substantive points of this comment:

Advertising rules should extend to all retailers making similar offers

Numerous retailers aside from those named in the complaints have been advertising offers for rebates on the purchase of computers that require an internet service contract. Because the FTC limited its complaints to these three retailers, it gives the impression that the FTC considered the advertising of these other retailers to be acceptable.

Proposed rules are inadequate.

As an example, a recent *Circuit City* advertisement showed the price of a computer as \$899.99. Additional verbiage, in smaller print, indicated this was "after rebate and before Internet fees (36 mos @ \$21.95 mo.)" Elsewhere, it stated the price was "\$1299.99 - \$400 CompuServe Savings".

Based on the proposed rules that would apply to the retailers named in these complaints, this advertising format might be considered permissible, even though the consumer must calculate the total dollar amount required for the Internet service contract. Even if this advertising format were changed to state the total dollar amount required for the Internet service as a single number, there would be no single number indicating the total dollar amount that the consumer would be obligated to pay.

A proper rule would require that the "after rebate" price must include all expenses that the purchaser is required to incur. In this example, the actual price of the computer with 36 months of CompuServe service would be \$1690.19, price after rebate \$1290.19.

Advertising rules should apply to all "bundled" offers

These offers bundle the purchase of a computer with a purchase commitment for Internet service, in spite of the fact that the ads represent that there's a specific price for the computer contingent on the agreement to contract for Internet service.

To represent that items within a bundle have a specific price when purchased as part of the bundle is materially false. The FTC rules should mandate that advertising indicate the bundled price, not the price of individual components within a purchase bundle.

Such rules should apply across the board to all products and services. **It is a basic and essential aspect of truthful advertising that advertised prices be the prices**

at which products and services are actually offered for sale.

Advertising rules should apply to all "term" offers

When an advertisement offers to provide a product or service based on a series of payments, the advertising should indicate the minimum total contractual obligation involved. This minimum total contractual obligation should be at least as prominent as the payment terms.

The products or services covered by the minimum total contractual obligation and what usage or conditions may cause the contractual obligation to be increased beyond the minimum need to be indicated in the ad as well.

Abusive rebate practices need to be examined

There is a growing body of evidence that businesses are employing abusive practices in fulfilling rebates. These take the form of delayed rebate payments, rebates which are denied without reasonable cause, and failure to notify a consumer that a rebate has been denied and to give the consumer the opportunity to correct the purported deficiency in the rebate submission.

The FTC should consider whether the use of rebates may be an inherently unfair business practice. If the FTC deems that rebates are not inherently unfair, it should establish a "Bill of Rights" for consumers applying for rebates, ensuring that rebate requests are not unreasonably denied and that consumers have the opportunity to correct the deficiency or alternatively to rescind the purchase which was the basis of the rebate.

Summary

The proposed consent decrees are inadequate and ineffective in addressing unfair business practices of which these ads are merely examples. The FTC should seek consumer redress and penalties where appropriate (for instance, where the retailer failed to honor the terms specified in an ad), but should focus more attention on establishing rules for truthful advertising.

The practice of using false and deceptive advertising has become so rife among otherwise legitimate retailers in the U.S. that consumers and regulators alike frequently fail to recognize it as such. In a modified form of "Gresham's Law," bad advertising has driven out good advertising.

The FTC should use this as an opportunity to establish principles of truthful advertising that will apply broadly to business in the U.S. The consumer should not have to bring a magnifying glass, obtain legal counsel, and spend an inordinate amount of time trying to figure out just how much they're obligating themselves to pay, whether they're buying computer products and services, wireless phone service, a new car or a tube of toothpaste.