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NORTHERN DISTRICT OF CALIFORNIA
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6 Attorneys for Plaintiff

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

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10 UNITED STATES OF AMERICA,)
11 Plaintiff,)
12 v.)
13 PEOPLEPC, INC., A Corporation,)
14 Defendant.)

C No. 02 4054

COMPLAINT FOR CIVIL PENALTIES,
INJUNCTIVE AND OTHER RELIEF

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

18
19 1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the
20 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and
21 56(a), to obtain monetary civil penalties and injunctive and other relief for defendant's violations
22 of the Commission's Trade Regulation Rule Concerning the Sale of Mail or Telephone Order
23 Merchandise (the "Mail Order Rule"), 16 C.F.R. Part 435; and injunctive relief for defendant's
24 violations of Rule 702 ("the Pre-Sale Availability Rule"), 16 C.F.R. 702, promulgated under the
25 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq., and injunctive relief for violations of
26 Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

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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) and § 2301 et seq.

3. Venue in the Northern District of California 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 PeoplePC, Inc. is a Delaware corporation with its principal office or place of business at 100 Pine Street, Suite 1100, San Francisco, California 94111. PeoplePC, Inc. transacts business in the Northern District of California.

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

6. Since 1999 defendant has advertised, offered for sale, sold, and distributed personal computers, computer-related products and Internet access services to buyers throughout the United States. Defendant sells its products and services directly over the telephone and on its Internet website, www.peoplepc.com.

7. Throughout 1999 and continuing thereafter, in the course of soliciting orders for merchandise by mail, telephone, or over the Internet, defendant has routinely promised buyers that merchandise will be shipped or delivered in an express period of time.

8. Defendant has disseminated or has caused to be disseminated advertisements for its personal computers and computer-related products, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following express shipping or delivery representations:

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- a. "Dear John Q. Sample,
...
About two-four weeks after you place the order, UPS will deliver the system to your home."
(Exhibit A, Sample letter to Ford employees).
 - b. "Order Form Worksheet for USA Rollout
...
Thank you for your order! Your new computer will be delivered to the above address in approximately two to four weeks."
(Exhibit B, Sample order form for Ford employees).
 - c. "Your computer will arrive in 2-3 weeks, along with your new member packet."
(Exhibit C, Defendant's Website, <<http://www.peoplepc.com>>).
 - d. **"SHIPPING TIMES - RWA Consumer All Systems*** Due to the large increase in new memberships, we're currently taking a little longer than usual to ship. It may be as long [sic] **three weeks**, though many people are receiving their orders earlier. . . ."
(Exhibit D, Shipping matrix for telephone sales).
9. In numerous instances defendant did not in fact ship or deliver within the promised time.
10. When defendant did not ship or deliver the merchandise within the promised times, it did not notify the buyers of the delay.
11. Defendant has offered PeoplePC personal computer systems with written warranties for sale through the mail, by telephone, and over the Internet, but has failed to disclose either (a) the full text of the written warranty; or (b) that the written warranty can be obtained free upon specific written request, and the address where such warranty can be obtained.

THE PRE-SALE AVAILABILITY RULE

12. The Pre-Sale Availability Rule was promulgated by the Commission under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., and became effective December 31, 1975. The Commission amended the Rule on March 12, 1987. In promulgating the Rule, the Commission determined that the availability of warranty information prior to sale is an important tool for consumers in making a purchasing decision either about the product itself or about buying a service contract for the product.
13. The Pre-Sale Availability Rule applies, among other things, to catalog and mail order sales, which are defined as "any offer for sale, or any solicitation for an order for a consumer

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1 product with a written warranty, which includes instructions for ordering the product which do
2 not require a personal visit to the seller's establishment." 16 C.F.R. § 702.3(c). Thus, the Pre-
3 Sale Availability Rule applies to orders for a consumer product with a written warranty that
4 consumers place by telephone, facsimile transmission, or on the Internet.

5 VIOLATION OF THE PRE-SALE AVAILABILITY RULE

6 COUNT I

7 14. Defendant has offered for sale to consumers PeoplePC personal computer systems with
8 written warranties by means of catalog or mail order sales, but has failed to disclose either (a) the
9 full text of the written warranty; or (b) that the written warranty can be obtained free upon
10 specific written request, and the address where such warranty can be obtained, as required by the
11 Pre-Sale Availability Rule. 16 C.F.R. § 702.3(c)(2)(i).

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

14 16. Section 110(b) of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(b), mandates that
15 the failure to comply with a rule promulgated under the Act is a violation of Section 5 of the FTC
16 Act, 15 U.S.C. § 45(a)(1). Therefore, defendant's failure to comply with the provisions of the
17 Pre-Sale Availability Rule, 16 C.F.R. § 702, was, and is, a deceptive act or practice.

18 THE MAIL ORDER RULE

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

24 VIOLATIONS OF THE MAIL ORDER RULE

25 COUNT II

26 18. At all times material hereto, defendant has engaged in the sale of merchandise ordered by
27 mail, telephone or on the Internet.

28 19. In numerous instances, after having solicited mail, telephone or Internet orders for

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1 merchandise and received “properly completed orders,” as that term is defined in Section
2 435.2(d) of the Mail Order Rule, 16 C.F.R. § 435.2(d), and having been unable to ship some or
3 all of the ordered merchandise to the buyer within the Mail Order Rule's applicable time, as set
4 out in Section 435.1(a)(1) of the Mail Order Rule, 16 C.F.R. § 435.1(a)(1) (the “applicable
5 time”), defendant has:

- 6 a. Violated Section 435.1(b)(1) of the Mail Order Rule by failing to offer to the buyer,
7 clearly and conspicuously and without prior demand, an option either to consent to a
8 delay in shipping or to cancel the order and receive a prompt refund;
- 9 b. Having failed within the applicable time to ship or to offer the buyer the option to either
10 consent to a delay in shipping or to cancel the buyer’s order and receive a prompt refund,
11 violated Section 435.1(c)(5) of the Mail Order Rule by failing to deem the order canceled
12 and to make a prompt refund the buyer; and,
- 13 c. Violated Section 435.1(c) of the Mail Order Rule by failing to make a refund, as the term
14 “refund” is defined in Section 435.2(e) of the Mail Order Rule, to the buyer, consisting of
15 the amount tendered or the charge incurred by the buyer.

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

18 21. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the
19 Mail Order Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1)
20 of the FTC Act, 15 U.S.C. § 45(a)(1).

21 CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

24 23. Each sale or attempted sale, during the five years preceding the filing of this complaint, in
25 which defendant has violated the Mail Order Rule in one or more of the ways described above
26 constitutes a separate violation for which plaintiff seeks monetary civil penalties.

27 24. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4
28 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section

COMPLAINT

1 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award
2 monetary civil penalties of not more than \$11,000 for each such violation of the Mail Order Rule.

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

5 PRAYER

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

- 8 (1) Enter judgment against defendant and in favor of plaintiff for each violation alleged in
9 this complaint;
- 10 (2) Award plaintiff monetary civil penalties from defendant for each violation of the Mail
11 Order Rule;
- 12 (3) Permanently enjoin defendant from violating the Mail Order Rule;
- 13 (4) Permanently enjoin defendant from failing to provide all outstanding refunds, promptly
14 and in full, to each consumer who is entitled to such refund under the Mail Order Rule;

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(5) Permanently enjoin defendant from violating the Pre-Sale Availability Rule, 16 C.F.R. 702; and
(6) Award plaintiff such additional relief as the Court may deem just and proper.

DATED:

Of Counsel:

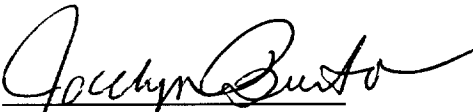
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