

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,
Plaintiff,

v.

STAPLES, INC.,
a corporation,
Defendant.

CIVIL ACTION NO.

CONSENT DECREE AND
ORDER FOR INJUNCTIVE
AND OTHER RELIEF

WHEREAS Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendant has waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law, and without Defendant admitting liability for any of the matters alleged in the Complaint;

THEREFORE, upon stipulation of Plaintiff and Defendant, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendant under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a).

DEFINITIONS

For the purpose of this Consent Decree, the following definitions shall apply:

3. “Mail Order Rule” or “Rule” means the Federal Trade Commission’s Trade Regulation Rule Concerning Mail or Telephone Order Merchandise, 16 C.F.R. Part 435, or as the Rule may hereafter be amended. A copy of the Rule is attached hereto as “Appendix A” and incorporated herein as if fully set forth verbatim.

4. “Refund” and “prompt refund” shall mean as defined in Sections 435.2(e)-(f) of the Mail Order Rule.

5. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

INJUNCTION

6. Defendant, its successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promoting, offering for sale, sale, or distribution of any product, in or affecting commerce, are hereby enjoined, directly or through any corporation, subsidiary, division or other device, from misrepresenting, in any manner, expressly or by implication, that customers can view in real time the availability of such product for purchase.

7. Defendant, its successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more

of them who receive actual notice of this Consent Decree by personal service or otherwise, in connection with the manufacturing, labeling, advertising, promoting, offering for sale, sale, or distribution of any product, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the current availability of such product for shipment or delivery, unless, at the time the representation is made, they possess and rely upon competent and reliable evidence that substantiates the representation.

8. Defendant, its successors and assigns, and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with any one or more of them who receive actual notice of this Consent Decree by personal service or otherwise, are hereby enjoined from violating, directly or through any corporation, subsidiary, division or other device, any provision of the Mail Order Rule, including but not limited to:

- a. Soliciting orders for the sale of merchandise by mail, telephone, facsimile, or Internet unless they have a reasonable basis to expect that they can ship such merchandise within the time stated in the solicitation or, if no time is stated clearly and conspicuously in the solicitation, within thirty (30) days after receipt of a properly completed order, as required by 16 C.F.R. § 435.1(a)(1);
- b. Failing, within a reasonable time after first becoming aware of their inability to ship in the time set forth in Section 435.1(a)(1) of the Mail Order Rule, and in no event later than that time, to offer 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, as required by 16 C.F.R.

§ 435.1(b)(1); and

- c. Failing to deem an order canceled and make a prompt refund to buyers who are entitled to such refunds under the Mail Order Rule, as required by 16 C.F.R.

§ 435.1(c).

CIVIL PENALTY

9. Defendant shall pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of Eight Hundred and Fifty Thousand Dollars (\$850,000).

10. Defendant shall make the payment required by Paragraph 9 within five (5) days of the date of entry of this Consent Decree in accordance with the instructions provided by the Office of Consumer Litigation, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for appropriate disposition.

11. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the entire unpaid penalty, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable.

COMPLIANCE

12. Defendant shall, within thirty days (30) of entry of this Consent decree, provide a copy of this Consent Decree and the Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule (Jan. 1995) ("Business Guide") to each of Defendant's

employees, agents, servants and attorneys whose duties include the exercise of managerial responsibility regarding Defendant's mail, telephone, facsimile or Internet order sales business, secure from each such person a signed and dated statement acknowledging receipt of the Consent Decree and the Business Guide, and shall, within ten (10) days of complying with this paragraph, file an affidavit with the Regional Director, Western Region, Federal Trade Commission, 901 Market Street, San Francisco, CA 94103, setting forth the fact and manner of Defendant's compliance, including the name and title of each person to whom a copy of the Consent Decree and the Business Guide has been provided.

13. For a period of five (5) years after the last date of dissemination of any representation covered by this Consent Decree, Defendant and its successors and assigns shall maintain and make available to the Federal Trade Commission, within seven (7) days of the date of receipt of a written request, business records demonstrating compliance with the terms and provisions of this Consent Decree, including, but not limited to:

- a. All advertisements and promotional materials containing a representation covered by this Consent Decree;
- b. All materials that were relied upon in disseminating a representation covered by this Consent Decree; and
- c. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question a representation covered by this Consent Decree, or the basis relied upon for such representation, including complaints and other communications with consumers

or with governmental or consumer protection organizations.

14. For a period of twenty (20) years from the date of entry of this Consent Decree, Defendant and its successors and assigns shall notify the Regional Director, Western Region, Federal Trade Commission, 901 Market Street, San Francisco, CA 94103, at least thirty (30) days prior to any change in Defendant's business, including, but not limited to, merger, incorporation, dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change in corporate status which may affect Defendant's obligations under this Consent Decree. Provided, however, that with respect to any change about which Defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant shall notify the Western Region's Regional Director as soon as practicable after obtaining such knowledge.

15. One hundred twenty (120) days after entry of this Consent Decree, Defendant shall provide a written report to the Federal Trade Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which the Defendant has complied and is complying with this Consent Decree. This report shall include but not be limited to:

- a. a specimen copy of each delay option notice used for the purposes of complying with any provision of the Mail Order Rule, and a statement setting forth in detail the procedures in place and method for providing such notices to consumers in a timely fashion; and
- b. a specimen copy of each advertisement or telemarketing script containing a shipping or delivery representation, and all procedures for making a shipping or

delivery representation to the buyer;

Defendant shall mail this written notification to: Regional Director, Western Region, Federal Trade Commission, 901 Market Street, San Francisco, CA 94103.

CONTINUING JURISDICTION

16. This Court shall retain jurisdiction of this matter for the purposes of enabling any of the parties to this Consent Decree to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the interpretation or modification of this Consent Decree, for the enforcement of compliance therewith, or for the punishment of violations thereof.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendant, pursuant to all the terms and conditions recited above.

Dated this _____ day of _____, 2003

UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof. Defendant waives any rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the investigation and prosecution of this action.

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