

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

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| In the Matter of |) | |
| |) | |
| VALUE AMERICA, INC., |) | DOCKET NO. C-3976 |
| a corporation. |) | |
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COMPLAINT

The Federal Trade Commission, having reason to believe that Value America, Inc., 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 Value America, Inc. is a Virginia corporation with its principal office or place of business at 2300 Commonwealth Drive, Charlottesville, Virginia 22901.

2. Respondent has advertised, offered for sale, sold, and distributed products to the public, including books, sporting goods, housewares, appliances, personal electronic devices, and personal computers. Value America sells these products through its Internet Web sites, <www.va.com> and <www.valueamerica.com> , and through toll-free telephone numbers.

3. 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.

4. The term "Mail Order Rule" means the Federal Trade Commission's Trade Regulation Rule entitled "Mail or Telephone Order Merchandise," 16 C.F.R. Part 435, and as it may hereafter be amended. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. S 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 Federal Trade Commission Act.

5. Respondent has disseminated or has caused to be disseminated advertisements for numerous computer systems, including but not limited to, a Toshiba Satellite 2100 CDS laptop,

an HP Pavilion 4535 Multimedia PC, a Proteva computer, an IBM Aptiva E572 Micro Tower, and an emachines etower 366C. Advertisements for these computers appear in various media and include but are not necessarily limited to the attached Exhibits A through E.

The advertisements contain the following statements:

Exhibit A: Magazine ad

Get Out of Here

Hit the Road with Our Notebooks and Palm PCs

[Depiction:Toshiba laptop]

Let 'Em Think You Paid Top Dollar

The Toshiba Satellite 2100CDS looks and performs like a high-priced notebook, but actually costs a lot less. Built for speed, this Satellite boasts a 400 MHz AMD K6@-2 processor with [component specifications for laptop].

Toshiba Satellite
\$1299, less optional Prodigy
\$400 Internet rebate!*

Pay as little as **\$899**

[A fine print disclosure, in approximately 5-point type, at the bottom of this magazine ad states:]

***Prodigy Offer Terms & Conditions** Offer limited to new Prodigy Internet members only and valid only in the United States. Mail-in rebate valid only on qualifying Toshiba notebook computers purchased from authorized Toshiba retailers or direct mail resellers between August 8, 1999, and December 31, 1999, and accompanied by enrollment in a fixed-term "Rebate:Toshiba/ Prodigy Internet" membership on Prodigy Internet between August 8, 1999, and January 31, 2000, using only the CD sent to you per this request. Enrollment in the Prodigy Internet service must be completed with an automatic payment plan on a valid major credit card. Payment of \$19.95 per month is required for the length of your commitment. Mail-in rebate offer is subject to all Terms & Conditions on the reverse side of the mail-in rebate form which you will receive with your CD. Rebate checks will be processed within 8 weeks after Prodigy has received payment for your second monthly Prodigy membership fee, received your properly completed rebate form with a legible copy of your store receipt, and established your creditworthiness. If you cancel your membership prior to the end of your fixed term enrollment commitment, your credit card will be charged a cancellation fee equal to the amount of your Prodigy Internet mail-in rebate plus a \$50 service fee as described in the Terms and Conditions on the mail-in rebate form. Rebate offered by Prodigy and not Toshiba.

Exhibit B: Radio ad

Announcer:

ValueAmerica.com - changing the way America buys. This week at ValueAmerica.com, we have the NEW Hewlett-Packard Pavilion 4535 Multi-media PC - with the Intel CELERON Processor - 400 megahertz It comes with a CD-ROM, Windows 98, and a 56K Modem. Imagine the quality of H-P at a price of less than \$500 - in a package that also includes stereo speakers, a color monitor and a color printer. At Value America, this H-P Pavilion 4535 Multi-media PC, with the Intel CELERON processor, is ONLY 449! - after internet rebate. You heard right! 449 and if you call right now, we'll throw in FREE DELIVERY! To take advantage of this week's special, the H-P Pavilion 4535 for only 499 (sic), with FREE Shipping, call now at 888-XXX-XXXX. 888-XXX-XXXX or go online at ValueAmerica.com.

Exhibit C: Infomercial

Audio Portion:

The following is a paid program brought to you by Value America, the Internet and now television's leading source for brand name products at unbeatable prices.

Stay tuned for the following products:

* * * *

Stay tuned for Value America Showcase.

* * * *

So how much do you think you should pay for a system like this? ... What would you do if I told you \$1299 after rebates? . . . [A]nd when you get hooked up with the Microsoft Internet plan they're going to give you a \$400 rebate. We're also going to give you a printer factory rebate of \$50 and a scanner rebate of \$50 for a total of \$500 in rebates. . . . [T]hat brings the total to \$1299 for everything we've talked about.

Simultaneously Displayed on TV Screen:

[Lists computer system and bundled components]

* * * *

“\$3000 [crossed out], \$2000 [crossed out] --
\$1299 after rebates”

“Value America Discount Price: \$1799 minus
-Microsoft Rebate: \$400 (with MSN
Activation)
-Printer Rebate: \$50
-Scanner Rebate: \$50
Total Rebates: \$500”

And, if you call right now, we're going to throw in free shipping and handling. . . .

* * * *

We're talking about Proteva, let's hear a little bit about Proteva. They're a huge company based in Wisconsin . . .

* * * *

“. . . one-year Proteva warranty . . .”

“\$1299 after rebates” [in lower left corner of the screen; remains in lower left corner of the screen for much of the remaining minutes of the program.]

* * * *

Proteva, 10 year old computer manufacturer . . .

* * * *

[The following is the full text of the terms and conditions associated with the \$400 rebate offer. This text is scrolled vertically down the television screen, over a 4 to 5 second time period. There is no audio or visual indication that this text applies to the rebate offer and, because it scrolls so quickly, it cannot be read or understood by viewers.]

[No audio]

Terms and Conditions.

We know that you will like our service, and as an inducement to give MSN Plus Internet Access a full and fair trial, we are prepared to lend you the amount of the rebate selected above (up to \$400) to help you get online. If you continue as a paying member of the MSN Plus service for the full period selected by you above, then you do not have to repay any part of the rebate amount. But if your MSN account is cancelled or terminated at any time before the end of the required period, you agree to pay back the full amount of the rebate. In either case you pay no interest.

(No audio)

Within six to eight weeks of our acceptance of your application, which is subject to credit approval, the Microsoft Network, LLS, ("MSN") will advance to you the amount of (*sic*) designated above provided you have signed up for the MSN Plus Internet Access service. The rebate amount will either be credited to your credit card account as designated above or will be remitted by check to the address designated above. Accordingly to qualify for this program (1) you must pay for the MSN Plus Internet Access service each month in advance (\$21.95); (2) you must purchase a Proteva PC no later than December 31, 1999; (3) this form must be completed fully mailed and postmarked within 30

(No audio)

days of purchase date; (4) you must sign below to show that you agree to the items and conditions described in this application and the MSN member agreement which was presented to you online upon signup (and checked "I accepted") for line service; (5) you must attach this application, the original receipt, evidencing your purchase, with the purchase price circled, and (6) you must be at least 18 years old. You may receive only one rebate for each purchase. Accordingly you may receive only one rebate for each new MSN Internet access account.

You are not obligated to continue as a MSN Plus Internet Access member for any particular length of time. HOWEVER, IF FOR ANY REASON WHATSOEVER YOU DO NOT CONTINUE FOR THE PERIOD OF TIME SPECIFIED ABOVE FOR THE REBATE YOU HAVE ELECTED TO RECEIVE, YOU AGREE THAT YOU WILL REPAY MSN THE AMOUNT [OF THE] REBATE ("Reimbursement amount") IMMEDIATELY UPON CANCELLATION OR TERMINATION OF YOUR MSN PLUS INTERNET ACCESS ACCOUNT. If you do not render payment in cash for the full reimbursement amount at the time that your MSN Plus Internet Access account is cancelled or terminated, and if your membership ends before the time designated for your rebate amount, you agree that MSN is authorized to change the reimbursement amount to your credit or debit card account. You acknowledge and agree that MSN may terminate your MSN Plus Internet Access account if you violate the MSN membership agreement. In such event you will be required to repay the reimbursement amount as described herein. You may designate your preferred credit card account above, but you understand and agree that MSN may charge any of your debit or credit card accounts and you authorize the issuer of any card account to which MSN charges the amount of the rebate to charge that amount to your account balance.

You agree that this agreement will be governed by the laws of the state of Washington and you consent to the exclusive jurisdiction and venue of the courts in King County Washington in all disputes arising out of or relating to this agreement.

You acknowledge and agree that your purchase is from the applicable retailer and not from MSN LLC, MSN or Microsoft Corporation.

This MSN rebate program is available only to residents of the 50 United States and the District of Columbia that purchase a Proteva PC.

[End of advertisement]

Exhibit D: Web page advertisements

Exhibit D.1

Hyperlink to D.2

[Depiction is a hyperlink which, after two more hyperlinks, leads to Exhibit D.2.]

| | | | |
|---|---|-----------------|-----------------------------|
|  | Aptiva E572 Micro Tower Price reflects \$400.00 Mail-in Rebate AMD® Athlon™ 500MHz Processor / 96MB / 17GB / 56Kbps Modem / DVD-ROM / Win98 (2nd Edition) | \$619.00 | Add to List |
|---|---|-----------------|-----------------------------|

2 Hyperlink to shopping cart list

(Exhibit D.1 is the initial Web page for the Home Computer section of Value America’s online store. Consumers can click on the shopping cart hyperlink to initiate the online purchase process, without viewing Exhibits D.2 or D.3.)

Exhibit D.2



Your Price: \$1,019.00 [Hyperlink to shopping cart list]
Price After Rebate: \$619.00



“Specifications”

[List of twenty technical specifications about the advertised model, followed by:]

- *Note: Monitor sold separately.*

[“Product Rebates” tab is a hyperlink to Exhibit D.3]

(Exhibit D.2: “Specifications” Web page accessed through a minimum of two hyperlinks, whose labels do not refer or relate to the monitor. The quoted statement “Note: Monitor sold separately.” appears at the bottom of the Web page after a lengthy list of technical product specifications. Consumers could purchase the advertised computer model from respondent online without viewing this page.)

Exhibit D.3

“Product Rebates”

“\$400 Mail-In Offer from Compuserve
3 year Internet Service contract and major credit card required. Valid with a purchase of an IBM Aptiva PC and monitor from July 18, 1999 to January 31, 2000. See rebate form for complete details.”

² [Undisclosed hyperlink behind the phrase “\$400 Mail-In Offer from Compuserve,” which leads to the home page of a third party Web site.]

(Exhibit D.3: “Product Rebates” Web page accessed from Exhibit D.1 through a minimum of two hyperlinks, the first of which is not labeled as referring or relating to information about the advertised rebate offer. This Web page discloses that the advertised rebate offer is from CompuServe and requires a three year Internet service contract. Consumers could purchase the Aptiva E572 Micro Tower, with its associated rebate offer, from respondent online without viewing Exhibit D.3. No “rebate form” or additional details about the CompuServe rebate offer are available at or from Value America’s Web site. An undisclosed hyperlink behind the phrase “\$400 Mail-In Offer from Compuserve” links to the home page of a third party Web site, which home page does not contain any information about the advertised rebate or any hyperlinks that refer or relate to the advertised rebate offer. Although information about other material terms and conditions of the CompuServe rebate offer is available on interior pages of the third party Web site, Value America’s Web pages do not hyperlink to these pages or otherwise provide access to this information.)

Exhibit E: Web banner ad

| | | | |
|-----------------|---|---------------------------------|--|
| FREE PC! |  | emachines etower 366C | Cyrix MII 366PR Monitor not included |
|-----------------|---|---------------------------------|--|

6. Through the means described in Paragraph 5, including but not necessarily limited to Exhibits A through E, respondent has represented, expressly or by implication, that the total cost of the advertised computer systems is \$899 for the Toshiba Satellite 2100CDS laptop, \$449 for the Hewlett-Packard Pavilion 4535 Multi-media PC, \$1299 for the Proteva PC and bundled video camera, printer, scanner and software, \$619 for the Aptiva E572 Micro Tower computer and FREE for the emachines etower 366C computer.

7. In truth and in fact, the total cost of the computers and bundled components described in Paragraph 6 was not as advertised. In order to obtain the advertised computer systems and bundled components at the prices advertised, consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for 36 months at an additional cost of \$19.95 to \$21.95 per month or, in the case of CompuServe Internet Service, optional full pre-payment of \$790.20. Therefore, the representations set forth in Paragraph 6 were, and are, false or misleading.

8. In its advertisements, including but not limited to Exhibits A through E, for the computers and bundled components described in Paragraph 6, respondent has represented that the total cost of the advertised computer systems, respectively, is \$899, \$449, \$1299, \$619, and FREE. In these advertisements, respondent has failed to disclose or failed to disclose adequately:

(a) that in order to obtain the advertised computers and bundled components for the advertised prices, consumers are required to subscri

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(b) with respect to Exhibits B and E, the amounts of the rebates - \$400 for the Internet service rebate - and the total price of the computer system, with bundled components where applicable, before rebates;

(c) that consumers who terminate their Internet service contracts within three years must repay all or a prorated portion of the \$400 rebate and, in the case of the CompuServe and Prodigy rebate offers, also pay a cancellation fee of up to \$50;

(d) that it can take up to eight weeks after payment has been received for the consumer's second monthly Internet service membership fee, or a total of 12 to 17 weeks, to receive the \$400 Prodigy Internet rebate; and

(e) that CompuServe 2000 Premier Internet, Prodigy Internet, and Microsoft MSN Plus Internet Access do not provide local access telephone numbers for their respective Internet services in all areas, and therefore that many consumers must either pay long distance telephone charges or surcharges of up to \$6.00 per hour to access their Internet services.

These facts would be material to consumers in their purchase or use of the products. The failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

9. Through the means described in Paragraph 5, including but not necessarily limited to Exhibit D, respondent has represented, expressly or by implication that the IBM Aptiva E572 Micro Tower computer includes a monitor at the advertised after-rebate price of \$619 or the total price of \$1,019. The IBM Aptiva E572 Micro Tower is depicted in Exhibit D with a monitor, with the IBM Aptiva logo written across the monitor, on both the initial product offering Web page and on subsequent Web pages advertising and offering this model for sale.

10. In truth and in fact, the depicted IBM Aptiva E572 Micro Tower does not include a monitor at the advertised after-rebate price of \$619 or the total price of \$1,019. Consumers must purchase a monitor separately. Although there is a statement on one page of the Internet ad indicating that a monitor is not included, the hyperlinks leading to the disclosure page are not labeled as referring or relating to the monitor, and the statement can be viewed only by scrolling to the bottom of the page, past a list of more than twenty technical product specifications. Furthermore, this disclosure is avoidable entirely before purchase by those consumers who view the depiction and proceed directly to the online ordering and payment process. Therefore, the representation set forth in Paragraph 9 was, and is, false or misleading.

11. In numerous instances, after having solicited telephone orders for merchandise, including but not limited to orders submitted over the Internet at its Web site, and having 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), respondent has been unable to ship some or all of the ordered merchandise to the buyer within the time stated in the solicitation, or if no time was stated, within 30 days, as required by Section 435.1(a)(1) of the Mail Order Rule, 16 C.F.R. § 435.1(a)(1).

12. In numerous instances in which respondent was not able to ship ordered merchandise as set forth in Paragraph 11, respondent solicited such orders when it had no reasonable basis to expect that it would be able to ship some or all of such merchandise within the time stated in the solicitation, or if no time was stated clearly and conspicuously in the solicitation, within thirty (30) days after receipt of a properly completed order, thereby violating 16 C.F.R. § 435.1(a)(1).

13. In numerous instances in which respondent was not able to ship ordered merchandise as set forth in Paragraph 11, respondent failed 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, thereby violating 16 C.F.R. § 435.1(b)(1).

14. In numerous instances in which respondent was not able to ship ordered merchandise as set forth in Paragraph 11, having failed to offer the affected buyers 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), respondent failed to deem the order cancelled and to make a prompt refund to the buyer involved, thereby violating 16 C.F.R. § 435.1(c)(5).

15. 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, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this fifth day of September, 2000, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

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