

cigar brand, respondents must display each of the five required warning statements randomly in as equal a number of times as possible, and must distribute the packages randomly in all parts of the U.S.A. in which they are marketed.

Part IX provides that, on most types of advertising, the five warning statements shall be rotated in an alternating sequence every three months. Part IX provides for equal simultaneous display of the warning statements on merchandisers, cigar boxes that can function as open package displays and utilitarian items. Parts VIII and IX of the proposed orders also require the companies to submit to the Commission for approval plans for the display of the warnings on cigar packages and advertisements, and to comply with the plans as approved.

Part X of the proposed orders states that the Commission will consider state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warning to be in conflict with the orders.

Part XI provides a safe harbor in the event the companies have taken reasonable steps to assure compliance; in the event of labels or advertisements that do not comply with the order, the proposed respondents will bear the burden of establishing that reasonable steps were taken to comply with the order. This same safe harbor provision is included in the Commission's smokeless tobacco regulations.

Part XII of the proposed orders states that the warning requirements shall become effective one hundred and eighty (180) days after issuance of the order.

Part XIII provides that in the event the Federal Cigarette Labeling and Advertising Act or the Comprehensive Smokeless Tobacco Health Education Act or the Commission's Smokeless Tobacco Regulations are amended or modified to change the size or format of the warnings for cigarettes or smokeless tobacco, the cigar orders may be reopened to determine whether the size or format of the warnings for cigars should be modified to conform to such changes.

Parts XIV through XVI of the proposed orders contain standard recordkeeping, reporting and compliance requirements.

The proposed orders do not contain a sunset provision due to the importance of the health warnings required therein.

#### Objectives of the Proposed Orders

The Commission's intent in obtaining the proposed consent orders is to

provide a uniform national system of health warnings on cigar labeling and advertising. National health warnings that are clear and conspicuous benefit consumers. Here, the cigar warnings will prevent future deception and unfairness by providing important information with which consumers nationwide can make more informed choices.<sup>4</sup>

Each of the five warnings conveys a simple and specific message about health risks associated with cigar use. The orders' requirements for display of the warnings on packaging and advertising will provide sufficient repetition of each warning statement to contribute to long-term recall of each message, while decreasing the likelihood that any one message will become so familiar and overexposed that its effectiveness will "wear out." Together, the five warnings provide a comprehensive warning scheme that provides necessary and important information to consumers nationwide.

Because the proposed respondents' cigar packaging and advertising is disseminated in the national marketplace, a comprehensive national system of simple and direct warnings will provide the greatest benefits to consumers. Moreover, multiple, and potentially inconsistent, warnings on individual packages or advertisements could neutralize or negate those benefits. Such multiple warnings may be confusing to consumers and undercut the saliency of the warnings required by these consent orders. Further, they are likely to have the unintended effect of making it more difficult for consumers to process the warning messages required here. And, while diminished effectiveness could result when one state mandates additional warnings on packages or advertisements bearing the Commission warnings, the problem will be exacerbated if more than one state imposes requirements applicable to a single package or advertisement.

In light of the important benefits from a national warning system, Part X of the Commission's orders preempts state or local requirements for different health warnings on any cigar labeling or advertising that is required to display the FTC warnings. At the same time, the Commission recognizes the critically important role that states play in consumer protection and tobacco control. The provision does not affect other state or local requirements. For example, required warnings for types of

<sup>4</sup> Uniform national health warnings likewise benefit national competition. Multiple different warnings can raise costs and regulatory burdens for national marketers such as the proposed respondents.

advertising that are not covered by the proposed orders (such as shelf talkers under a certain size), or state or local restrictions on advertising placement or youth access to tobacco products are not affected. It is the Commission's intent that this provision apply only to state requirements for different health warnings by companies who have entered into the FTC consent orders, and only to packages and advertising required to contain the federally-mandated warnings.

The purpose of the analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way the terms therein.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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#### FEDERAL TRADE COMMISSION

[File No. 992 3206]

#### Value America, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before July 31, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Joel Winston or Michael Dershowitz, FTC/S-4002, 600 Pennsylvania Ave., NW, Washington, D.C. 20580 (202) 326-3153 or 326-3158.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 29, 2000), on the World Wide Web, at "<http://www.ftc.gov/ftc/format.htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### **Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Value America, Inc. ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent advertises, sells, and distributes personal electronic devices, computer software, personal computers, and other products through its Internet Web site (reached by <[www.va.com](http://www.va.com)> or <[www.valueamerica.com](http://www.valueamerica.com)>), and through toll-free telephone numbers. This matter concerns allegedly false and deceptive advertising claims regarding the sale of various computer systems based upon a \$400 rebate that required consumers to enter into a three year contract for Internet service. This matter also concerns alleged violations of the Mail or Telephone Order Merchandise Rule.

The Commission's proposed complaint alleges that respondent

falsely claimed that the total cost of a Toshiba Satellite 2100CDS laptop was \$899; that the total cost of a Hewlett-Packard Pavilion 4535 Multimedia PC was \$449; that the total cost of a Proteva computer system was \$1299; that the total cost of an IBM Aptiva E572 Micro Tower computer was \$619; and that an emachines etower 366C computer was "free." In fact, in order to obtain these computers at the advertised prices, consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of \$19.95 to \$21.95 per month or, in the case of CompuServe Internet Service, an optional full pre-payment of \$790.20.

The complaint also alleges that when respondent represented that the total cost of the computer was, respectively, \$899, \$449, \$1299, \$619, or "free," respondent failed to disclose or failed to disclose adequately: (a) That consumers were required to subscribe to CompuServe 2000 Premier Internet Service, Prodigy Internet, or Microsoft MSN Plus Internet Access for three years at an additional cost of \$19.95 to \$21.95 per month, or in the case of CompuServe Internet Service, an optional full pre-payment of \$790.20; (b) the amounts of the rebates, and the total price of the computer systems before rebates with respect to the Hewlett-Packard Pavilion 4535 Multimedia PC, and the emachines etower 366C computer; (c) that consumers who cancel the Internet service within three years must repay all or a portion of the \$400 rebate and, in the case of the CompuServe and Prodigy rebates offers, also pay a cancellation fee of up to \$50; (d) that, in the case of the Prodigy rebates, it can take a total of 12 to 17 weeks to receive the \$400 rebate; and (e) that CompuServe, Prodigy, and Microsoft 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, in the case of CompuServe 2000 or Prodigy Internet, \$6.00 per hour to access their Internet service. The complaint alleges that the failure to disclose these material facts is a deceptive practice.

In addition, the complaint alleges that respondent falsely claimed that the IBM Aptiva E572 Micro Tower computer included a monitor at no additional cost. In fact, consumers must purchase a monitor separately. The complaint also alleges that in numerous instances, respondent failed 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 after receipt of a properly completed order, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship some or all of the ordered merchandise to the buyer, respondent failed to offer to the buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by the Mail Order Rule. The complaint also alleges that when respondent was not able to ship ordered merchandise to the buyer, and having failed to offer the affected buyer an option either to consent to a delay in shipping or to cancel the order and receive a prompt refund, as required by the rule, respondent failed to deem the order canceled and to make a prompt refund the buyer, as required by the Mail Order Rule.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits respondent from making any misrepresentations as to the price or cost to consumers of any computer, computer-related product, or Internet access service or what is included in the price of any such product or service.

Part II of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any computer, computer-related product, or Internet access service, when that price or cost, or any rebate, is conditioned upon the purchase of another product or service, unless respondent discloses clearly and conspicuously, and in close proximity to the price, cost or rebate representation that consumers must purchase the additional product or service in order to obtain the advertised price or rebate. In addition, Part II requires respondent to disclose the cost of the other product or service that must be purchased, along with the length of time consumers are required to purchase such other service. Part II also contains a proviso that permits respondent to use the terms "rebate" or "discount" without making the additional cost disclosures, as long as respondent does not describe or characterize the rebate or discount in any way.

Part III of the proposed order prohibits the respondent from making a claim about the after-rebate price or cost of any computer, computer-related product, or Internet access service, unless it discloses, clearly and conspicuously, and in close proximity to the after-rebate price or cost

representation, the amounts of any rebates offered, and the total cost of the computer product or service, excluding any rebate amounts (*i.e.*, the before-rebate-price). Part III also contains a proviso that states that if there is only one rebate involved in the order, and no other reductions in the total price of the product or service, respondent need only disclose the amount of that one rebate, and need not also disclose the before-rebate price.

In connection with the promotion or sale of any Internet access service, or any computer or computer-related product whose price is conditioned upon the purchase of Internet access service, Part IV of the proposed order prohibits respondent from making any representation about the price or cost to consumers of any Internet access service, unless it discloses certain material facts. If consumers have to pay additional fees, charges, rebate repayments, or other costs to cancel the Internet access service, the amounts of such costs must be disclosed. If consumers may have to pay long distance telephone charges, hourly surcharges, or other costs in excess of local telephone fees to access the Internet service, this fact must be disclosed, along with a means for consumers to ascertain whether or not they would have to incur such costs and the amounts of any such costs. In addition, respondent must disclose the amount of time required for purchasers to receive any rebate. These disclosures must be clear and conspicuous.

Part IV of the proposed order also contains a proviso, that together with the definition of "through the use of a hyperlink," provides a way in which the disclosures required by Part IV can be made on the Internet with hyperlinks. These disclosures may be made through the use of hyperlinks, as long as each hyperlink label contains sufficient information about the nature and importance of the required disclosure, is itself clear and conspicuous, is on the same Web page and proximate to the Internet service price or cost representation, and leads directly to the full disclosure. According to the proviso, if a hyperlink is used to disclose information about Internet cancellation terms, it must be labeled as follows: "Early Cancellation of the Internet Service May Result in Substantial Penalties. Click Here." Similarly, if a hyperlink is used to disclose information about Internet access costs, it must be labeled: "You May Have to Pay Significant Telephone Charges to Use the Internet Service. Click Here." Finally, if a hyperlink is used to disclose information about the

time it takes to receive a rebate, it must be labeled: "Time to Receive Rebate. Click Here."

Part V of the proposed order prohibits respondent from violating any provision of the Mail or Telephone Order Merchandise Rule, including the soliciting of orders for merchandise, either by mail or phone, without a reasonable basis to expect to be able to ship some or all of the merchandise within the time stated in the solicitation, or if no time is stated, within 30 days of receiving a properly completed order. Respondent must offer the buyer the option of either consenting to a delay in shipping or canceling the order and receiving a prompt refund when respondent is unable to ship within the applicable time period. Respondent must also deem the order canceled and make a prompt refund in instances where respondent failed to ship on time and failed to offer the buyer the option of either consenting to the delay or canceling the order and receiving a prompt refund.

Part VI of the proposed order requires respondent to maintain and make available to the Commission for five years, business records demonstrating compliance with the terms and conditions of Part V. Part VII of the proposed order requires respondent to compile a list of purchasers who ordered products from respondent and paid for them prior to the service date of the order, and who had not previously received a refund or consented to a delay, but did not receive ordered products more than ten days after the date respondent stated they would be shipped, or the date of the delay notice. Respondent must then cancel each such order and send a refund to each purchaser on the list for the total amount paid, including all taxes and shipping and handling charges, if any. Respondent must furnish the list of purchasers to the Commission, indicating for each the amount and date the refund was paid.

Part VIII of the proposed order contains a document retention requirement, the purpose of which is to ensure compliance with the proposed order. It requires that respondent maintain copies of ads and promotional material that contain representations covered by the proposed order, and materials that were relied upon by respondent in complying with the proposed order.

Part IX of the proposed order requires respondent to distribute copies of the order to various officers, agents and employees of respondent.

Part X of the proposed order requires respondent to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part XI of the proposed order requires respondent to file with the Commission one or more reports detailing compliance with the order.

Part XII of the proposed order is a "sunset" provision, dictating that the order will terminate twenty years after the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration on Aging

[Program Announcement No. AoA-00-4]

### Fiscal Year 2000 Program Announcement; Availability of Funds and Notice Regarding Applications

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Announcement of availability of funds and request for applications to develop new Family Friends/Volunteer Senior Aides (VSA) projects and, in addition, to provide training and technical assistance to Family Friends/VSA projects.

**SUMMARY:** The Administration on Aging announces that it will hold a grant award competition, under this announced priority area, for seven (7) to eight (8) new model projects that demonstrate effective ways of planning, developing, and sustaining Family Friends/VSA programs for one (1) project to provide appropriate training and technical assistance to the Family Friends/VSA projects.

The deadline date for the submission of applications is August 14, 2000. For the model project competition, eligible applicants are restricted to public or nonprofit community-level agencies or organizations. In addition, because the primary focus of this priority area is on the establishment of new model Family Friends/VSA projects in communities other than those which have already