

agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (a) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in

"commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the availability of any microprocessor upgrade product.

II.

IT IS FURTHER ORDERED that respondent, Apple Computer, Inc. a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any computer hardware product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product is currently upgradeable, unless at the time such representation is made, the upgrade is then available, in reasonable quantities to the public, given good-faith projections of anticipated demand.

III.

IT IS FURTHER ORDERED that respondent, Apple Computer, Inc., a corporation, its successors and assigns, and respondent's officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any microprocessor upgrade product that incorporates a new logic board as part of the upgrade product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall not represent that such product is an "upgrade," in any manner, expressly or by implication, unless it discloses, clearly and prominently, and in close proximity to the representation, that a new logic board is a component of the upgrade product.

IV.

- A. Within five (5) days of the date of service on respondent of this order, respondent shall publish notice of this redress provision in a nationally circulated newspaper. This notice shall be in the form set out in Appendix A.
- B. Within ten (10) days of the date of service on respondent of this order, respondent shall compile:
 1. A mailing list containing the name and last known address of each consumer who purchased a Performa 550, Macintosh LC 550, or Performa 560 computer in the United States or in a territory of the United States on or after April 1, 1994; and

2. A mailing list containing the name and last known address of each consumer who purchased a PowerPC upgrade for a Performa 550, Macintosh LC 550, or

respondent shall arrange for these consumers to obtain the equivalent product at the authorized Apple dealer of the consumer's choice. Respondent shall arrange for that dealer to transfer from the consumer's Performa 550, Macintosh LC 550, or Performa 560 to the equivalent product: (1) all programs and data from the hard drive; and (2) any peripherals or memory with which the consumer had upgraded their original system. Respondent shall also arrange for the dealer to test the equivalent product after the hardware and software transfer to ensure the functionality of all such transfers. All services performed pursuant to this paragraph shall be at respondent's expense.

- I. Respondent shall extend the warranty on the Performa 550, Macintosh LC 550, and Performa 560 to include all parts and labor charges necessary for installation of a PowerPC Upgrade Kit. Within thirty (30) days of the date of service of this order, respondent shall arrange for its authorized service locations to perform this installation. Respondent shall also provide each location with any installation instructions that they might not otherwise possess which are unique to the installation of a PowerPC Upgrade Kit.
- J. Within fifteen (15) days of the date of service of this order, respondent shall send via first class-mail, postage prepaid, a notice in the form set forth in Appendix D to this order to each purchaser listed on the mailing list required by Part IV.B.2. No information other than that contained in Appendix D shall be included. No additional materials, other than a postage pre-paid envelope for return of the offer form, shall be transmitted therewith. Respondent shall send seven hundred and seventy-six (776) dollars to each consumer who, within seventy-five (75) days of service of this order, returns the form contained in Appendix D and either: (1) has previously submitted the registration card included in the PowerPC upgrade; or (2) provides reasonable proof of purchase of the PowerPC upgrade.
- K. The envelope containing the items set forth in Appendix D shall be in the form set forth in Appendix E to this order. For each mailing returned by the U.S. Postal Service as undeliverable for which respondent thereafter obtains a corrected address, respondent shall, within fifteen (15) business days after receiving the corrected address, send the items set forth in Appendix D.

- L. Respondent shall adequately staff an 800 number to answer questions from any consumer who receives a notice described in this redress provision, and any questions resulting from the publication of the notice described in Part III.A.
- M. Within two hundred forty (240) days of the date of service of this order, respondent shall furnish to Commission staff the following:
 - 1. In computer readable form and in computer print out form, the following:
 - a. A list of the names and addresses of all

V.

IT IS FURTHER ORDERED that for three (3) years after the last date of dissemination of any representation covered by this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All materials that were relied upon in disseminating such representation; and
- B. All tests, reports, studies, surveys, demonstrations or

- A. Any paragraph in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further,

FEDERAL TRADE COMMISSION

By

Matthew D. Gold
Linda K. Badger

Counsel for the Federal Trade Commission

APPROVED:

Jeffrey Klurfeld, Director
San Francisco Regional Office

[Newspaper Notice]

**NOTICE TO PURCHASERS OF APPLE PERFORMA 550,
MACINTOSH LC 550 AND PERFORMA 560 COMPUTERS:**

IF YOU PURCHASED AN APPLE PERFORMA 550, A MACINTOSH LC550 OR A PERFORMA 560 COMPUTER ON OR AFTER APRIL 1, 1994, YOU ARE ENTITLED TO PURCHASE A POWERPC UPGRADE KIT OR ITS EQUIVALENT FOR THE SUM OF \$599.00.

When we sold you your Apple computer, we advertised that it was "Ready for PowerPC upgrade." While a PowerPC upgrade was subsequently offered for these models, the Federal Trade Commission ("FTC") and Apple have examined the representations that Apple made in connection with the sales of these models. While Apple believes that the upgrade

Should you have any questions regarding this upgrade offer, please call 1-800- ____-____

APPLE COMPUTER, INC.

[Form to be Attached to Newspaper Notice]

RETURN THIS FORM WITH YOUR PAYMENT TO THE FOLLOWING ADDRESS:
[ADDRESS]

I am the purchaser of a Performa 550/ Performa 560/ Macintosh LC 550 (circle the correct model number) computer. I understand that I must have purchased my computer after April 1, 1994 to participate in this offer and that I must include the serial number of my computer with my order. I would like to order a PowerPC Upgrade Kit. Please deliver my purchase to the following address:

NAME: _____

STREET ADDRESS: _____

CITY AND STATE: _____

ZIP CODE: _____

____ My check for \$599.00 is enclosed (make checks payable to Apple Computer, Inc.)

____ Please charge my ____ Visa ____ MasterCard ____ American Express

Credit Card Number

Expiration Date

I hereby certify that I bought an Apple Performa 550, Performa 560 or Macintosh LC 550 in _____ (month you purchased your computer), ____ (year you purchased your computer). The serial number of my computer is _____ .

DATED: _____, 1997.

Signature

[Apple Americas Letterhead]

[Date]

Re: Performa 550/560/Macintosh LC 550 Upgrade Offer

Dear [Customer Name]:

Our records show that during 1994 or 1995, you purchased a Performa 550, a Macintosh LC 550 or a Performa 560 from Apple Computer, Inc.

When we sold you your Apple computer, we advertised that it was "Ready for PowerPC upgrade." While a PowerPC upgrade was subsequently offered for these models, the Federal Trade Commission ("FTC") and Apple have examined the representations that Apple made in connection with the sales of these models. While Apple believes that the upgrade representations were appropriate, customer satisfaction is our highest priority and, to this end, we have reached a settlement with the FTC that gives purchasers of these computers who would like to upgrade their computers an opportunity to secure a PowerPC upgrade at an attractive price.

For a limited time, Apple is offering its Performa 550/560 and Macintosh LC 550 customers a PowerPC upgrade kit for \$599. This upgrade kit will include the components necessary to make the PowerPC upgrade, and will also include an additional 4 megabytes of RAM which will allow the PowerPC chip to operate effectively. In addition, the kit will contain two key software packages: System 7.5, the operating system for the PowerPC; and the PowerPC upgrade for Claris Works. Included in the upgrade kit will be a coupon which will cover the cost of installing the upgrade's hardware components. Upon receiving your upgrade kit, you will only need to take your computer, the upgrade kit and the upgrade coupon to your local authorized Apple dealer, who will install the hardware for you at no additional cost.

To take advantage of this offer, please fill out the information on the enclosed form and return it, along with a payment in the amount of \$599. You may wish to make a copy of the form for your records. Upon receipt of payment and a properly completed form, Apple will ship the upgrade kit directly to you within approximately 75 days.

Please note that this offer is being made for a limited time only and that to receive an upgrade kit at this price, customers must respond with payment and a properly completed form by no later than [75 days from date of service of order]. Because of the limited availability of upgrade kits, we will not be able to extend this deadline, and we will not be offering this upgrade opportunity in the

future. You should also note that this upgrade opportunity is only available to customers who purchased Performa 550/560 and Macintosh LC 550 computers after April 1, 1994. Should you have any questions regarding this upgrade offer, please call our information line at 1(800) --. As always, we at Apple view customer satisfaction as our most important product. We appreciate your choosing Apple and look forward to serving you again in the future.

Sincerely,

Robin Abrams
Vice-President and General Manager
Apple Americas

**RETURN THIS FORM WITH PAYMENT
(AN ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE)**

I am the purchaser of a Performa 550 / 560 / Macintosh LC 550
(circle the correct model number) computer. I understand that I must
have purchased my computer after April 1, 1994, to participate in this
offer and that I must include the serial number of my computer with my
order. I would like a PowerPC Upgrade Kit. Please deliver my purchase
to the following address:

NAME: _____

STREET ADDRESS: _____

CITY AND STATE: _____

ZIP CODE: _____

_____ My check for \$599 is enclosed (make checks payable to Apple
Computer, Inc.)

_____ Please charge my _____ Visa _____ Master Card _____ American Express

Credit Card Number

Expiration Date

I hereby certify that I bought an Apple Performa 550, Performa 560
or Macintosh LC 550 in _____ (month you purchased your
computer), _____ (year you purchased your computer). The serial
number of my computer is _____ .

DATED: _____, 1997.

Signature

Apple Americas
[address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[ADDRESS]

**ATTENTION: IMPORTANT POWERPC UPGRADE OFFER
FOR YOUR PERFORMA 550, MACINTOSH LC 550,
OR PERFORMA 560 COMPUTER INSIDE**

[Apple Americas Letterhead]

[Date]

Re: Performa 550/560/Macintosh LC 550 Upgrade Rebate

Dear [Customer Name]:

Our records show that during 1994 or 1995, you purchased a PowerPC upgrade for either a Performa 550, a Macintosh LC 550 or a Performa 560 computer.

When we sold you your Apple computer, we advertised that it was "Ready for PowerPC upgrade." For the past several months, the Federal Trade Commission ("FTC") and Apple have examined the upgrade representations that Apple made in connection with the sales of these models. While Apple believes that the upgrade representations were appropriate, customer satisfaction is our highest priority and, to this end, we have reached a settlement with the FTC which will give purchasers of these computers who have not yet upgraded their computers an opportunity to secure a PowerPC upgrade at an attractive price.

Both we and the FTC believe that it is appropriate and fair to provide customers who have already purchased a PowerPC upgrade a cash rebate in order to put them on an equal footing with customers taking advantage of the new upgrade offer. Accordingly, we would ask that you fill out the enclosed form, verifying that you did, in fact, purchase a PowerPC upgrade for a Performa 550, a Macintosh LC 550 or a Performa 560 computer. Upon receipt of your completed form and proof of purchase, Apple will mail you a check in the amount of \$776 to the address designated on your form. (Proof of purchase is not required for customers who filled out and mailed to Apple the registration card included in the PowerPC upgrade). Please note that this offer is being made for a limited time only and that to receive a cash rebate qualified customers must respond with a completed form and proof of purchase by no later than [75 days from date of service of order]. Should you have any questions regarding this rebate offer, please call our information line at 1(800) --.

As always, we at Apple view customer satisfaction as our most important product. We appreciate your choosing Apple and look forward to serving you again in the future.

Sincerely,

Robin Abrams
Vice President and General Manager
Apple Americas

**RETURN THIS FORM TO RECEIVE REBATE
(AN ENVELOPE IS ENCLOSED FOR YOUR CONVENIENCE)**

My name is _____ . I purchased a PowerPC upgrade for a Performa 550 / 560 / Macintosh LC 550 computer (circle the correct model number). I understand that Apple is prepared to provide a rebate of \$776.00 for those who purchased PowerPC upgrades for these computers and that to be entitled to the rebate, customers must have either registered the upgrade with Apple at the time of purchase or now provide proof of purchase.

Please Check One:

_____ I previously filled out and mailed the registration card that accompanied my Power PC upgrade to Apple Computer, Inc.

_____ I did not fill out the registration card when I received my PowerPC upgrade, but I have enclosed proof-of-purchase (receipt, canceled check, credit card charge, or original packing list or original label from PowerPC upgrade box).

Please deliver my rebate check to the following address:

NAME:

STREET ADDRESS:

CITY/STATE/ZIP

Signature

Apple Americas
[address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[Address]

**ATTENTION: CASH REBATE OFFER ENCLOSED FOR
POWERPC UPGRADE PURCHASERS**

advertisements contain the following statement:

"Ready for PowerPC upgrade." [Exhibit A]

PARAGRAPH FIVE: Respondent disseminated or caused to be disseminated advertisements for the "PowerPC" upgrade to the Performa 550, Macintosh LC 550, and Performa 560 computers, including but not necessarily limited to the attached Exhibits B-D. These advertisements contain the following statements:

- A. "And when you're ready to expand your [Macintosh LC 550] system for more performance, you can install an optional CD-ROM drive, add an Ethernet card, or upgrade to our new Power Macintosh™ technology."

[Exhibit B (Print: "Apple Education Recommended Products At a Glance")]

- B. **"Can a personal computer grow up with your family?"**

With technology changing so quickly, it's only natural to wonder whether the computer you buy today will become obsolete tomorrow. That's why Apple designed the Macintosh Performa to work as well tomorrow as it does today.

. . .

You can even add extra memory or upgrade your Performa to the PowerPC chip (making it virtually impossible to outgrow).

Performa
The Family Macintosh

[Exhibit C (Print: "Can a personal computer grow up with your family?")]

- C. "A PARENT'S GUIDE TO COMPUTERS

. . .

Every Performa can grow with your family. Each one has enough memory, power, and storage space to serve your family for years. However, should you decide you want to upgrade in the future, you can expand your Performa's RAM, hard drive storage, and even

microprocessor to keep step with improvements in technology (such as the hot new PowerPC chip)."

[Exhibit D (Special Advertising Section insert: "A Parent's Guide To Computers.")]

PARAGRAPH SIX: Through the use of the statements contained in the advertisements referred to in PARAGRAPH FOUR, including but not necessarily limited to the advertisement attached as Exhibit A, respondent has represented, directly or by implication, that a PowerPC upgrade was available to consumers at the time that they purchased a Performa 550 or Performa 560 computer.

PARAGRAPH SEVEN: In truth and in fact, a PowerPC upgrade was not available to consumers at the time that they purchased a Performa 550 or Performa 560 computer. Therefore, the representation set forth in PARAGRAPH SIX was, and is, false and misleading.

PARAGRAPH EIGHT: Through the use of the statements contained in the advertisements referred to in PARAGRAPHS FOUR and FIVE, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondent has represented, directly or by implication, that a PowerPC upgrade would be available within a reasonable period of time after the purchase of a Performa 550, Macintosh LC 550, or Performa 560 computer.

PARAGRAPH NINE: In truth and in fact, the PowerPC upgrade was not available within a reasonable period of time after the purchase of a Performa 550, Macintosh LC 550, or Performa 560 computer. No such upgrade was offered by respondent for at least one year after it began representing that the Performa 550, Macintosh LC 550, or Performa 560 computers were upgradeable. Indeed, by the time respondent made the upgrade available, the cost of the upgrade approached the cost of an entirely new computer with a PowerPC microprocessor. Therefore, the representation set forth in PARAGRAPH EIGHT was, and is, false and misleading.

PARAGRAPH TEN: Through the use of the statements contained in the advertisements referred to in PARAGRAPHS FOUR and FIVE, including but not necessarily limited to the advertisements attached as Exhibits A-D, respondent has represented, directly or by implication, that at the time it made the representations set forth in PARAGRAPHS SIX and EIGHT, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH ELEVEN: In truth and in fact, at the time it made the representations set forth in PARAGRAPHS SIX and EIGHT, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH TEN was, and is, false and misleading.

PARAGRAPH TWELVE: In its advertising of the Performa 550, Macintosh LC 550, and Performa 560 computers, respondent represented that these computers were upgradeable to PowerPC technology. Respondent failed to disclose that, in order to obtain the PowerPC technology, consumers would need to purchase and install an upgrade package that included not only a PowerPC upgrade card, but also a new logic board. As a result, consumers were not aware that they would have to incur the cost and inconvenience associated with the replacement of the logic board. The fact that a logic board was a component of the upgrade package would be material to consumers in their decision to purchase the computer. The failure to disclose this fact, in light of the representations made, was a deceptive practice.

PARAGRAPH THIRTEEN: 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.

THEREFORE, the Federal Trade Commission, on this _____ day of _____, 1997, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-D attached to paper copies of complaint, but not available in electronic form.]

ANALYSIS OF PROPOSED CONSENT
ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Apple Computer, Inc. (hereinafter "Apple" or "respondent"). Apple is a major manufacturer and marketer of personal computer hardware and software products.

The proposed consent order has been placed on the public

associated with the replacement of the logic board.

Part I of the proposed order prohibits Apple from misrepresenting the availability of any microprocessor upgrade product. Part II of the proposed order prohibits Apple from representing that any computer hardware product is currently upgradeable, unless at the time such representation is made, the upgrade is then available, in reasonable quantities to the public, given good-faith projections of anticipated demand.

Parts III and IV of the proposed order address Apple's failure to disclose that the upgrade product for the Performa 550, Macintosh LC 550, or Performa 560 computers would include a new logic board in addition to an upgrade card. Part III provides that Apple, when marketing any microprocessor upgrade product that incorporates a new logic board, may not represent that such product is an "upgrade," unless it clearly and prominently discloses that a new logic board is a component of the upgrade product.

Part IV of the proposed order prescribes a redress program under which Apple is required to offer a PowerPC Upgrade Kit for the reduced price of \$599 to consumers who purchased a Performa 550, 560 or Macintosh LC 550 computer after Apple began advertising them as upgradeable. Under Part IV, the kit will include all of the hardware necessary for the upgrade, as well as four megabytes of RAM, two essential pieces of PowerPC software, and a coupon for free installation of the upgrade redeemable at any authorized Apple service location.

Under Part IV, Apple has the option of providing eligible consumers with a new PowerPC system in lieu of the upgrade kit. This provision is designed to protect consumers if Apple runs out of the hardware necessary to build the upgrade kits. Any consumer who receives a new system will have to return the old computer to an authorized Apple dealer. Apple will then be responsible for arranging for the dealer to transfer all the consumer's data and peripherals to the new PowerPC, and for testing the new system to make certain that it is functional.

To compensate the consumers who have already purchased an upgrade for one of the relevant computers, Part IV of the proposed order requires Apple to rebate \$776.00 of the original purchase price of \$1,375.00.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file

one or more reports detailing compliance with the order.

The purpose of this 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 their terms.