

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

INPHONIC, INC.,
a corporation

FILE NO. 062-3066

AGREEMENT CONTAINING
CONSENT ORDER

The Federal Trade Commission has conducted an investigation of certain acts and practices of InPhonic, Inc., a corporation (“InPhonic” or “proposed respondent”). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between InPhonic, Inc., by its duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent InPhonic is a Delaware corporation with its principal office or place of business at 1010 Wisconsin Avenue, NW, Suite 600, Washington, DC 20007.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify 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 proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

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 This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same m

provided, subsequent to the purchase, to consumers who submit a request for redemption after satisfying the terms and conditions of the offer.

3. “Clearly and prominently” shall mean as follows:
 - a. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. Provided, however, that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the ad is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.
 - b. In a print advertisement, promotional material (including, but not limited to a rebate coupon or form), or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.
 - c. On a product label, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

4. “Required rebate documentation” shall mean rebate coupons or forms, receipts, UPC codes, or other materials intended to be supplied by respondent to consumers and which consumers must include as part of a properly completed rebate request.

5. “Eligible purchaser” shall mean each consumer: 1) who was a bona fide purchaser of an InPhonic product for which a rebate was being offered from October 1, 2004 to the present; 2) who submitted a request for such a rebate prior to twelve (12) weeks before the date of service of this order; 3) whose InPhonic rebate has not been paid as of the date of service of this order; and

- a. whose request was denied solely on the basis of one or more of the following reasons:
 - i. the consu

3. that any rebate submission that does not strictly comply with all rebate terms and conditions, or that is deemed in any way illegible, may be rejected with little or no opportunity to resubmit, if such is the case;
 4. any requirement for submitting bills, records, or any other documentation, with a rebate request;
 5. when consumers can expect to receive their rebates; and
 6. that an email address is required to be eligible for the rebate, if such is the case; and
- B. discloses on the rebate coupon or form, clearly and prominently, all terms, conditions, or other limitations of the rebate offer.

II.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service sold to consumers, in or affecting commerce, shall not:

- A. misrepresent, in any manner, expressly or by implication, what bills, records, or other documentation that consumers must submit with any rebate request; or
- B. misrepresent, in any manner, expressly or by implication, any material terms of any rebate program, including the status of, or reasons for, any delay in providing any rebate.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product or service sold to consumers, in or affecting commerce, shall not represent, in any manner, expressly or by implication, that consumers will have the opportunity to resubmit deficient rebate requests, unless respondent provides such consumers a reasonable period of time in which to resubmit such rebate requests and notifies them precisely how to correct any deficiencies.

IV.

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mailing returned by the U.S. Postal Service as undeliverable for which respondents thereafter obtains a corrected address, respondents shall, within fifteen (15) business days after receiving the corrected address, send the items set forth in sub-part B of this Part to the co

VIII.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondent InPhonic, and its successors and assigns, shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part 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 Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or

upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of April, 2007

InPhonic, Inc.

By:

WALTER LEACH, ESQ.
General Counsel
InPhonic Inc.
1010 Wisconsin Avenue, NW, Suite 600,
Washington, DC 20007

DANA FRIX, ESQ.
Chadbourne & Parke LLP
1200 New Hampshire Avenue, NW
Washington, DC 20036

Attorney for Respondent

[InPhonic, Inc. Letterhead]

[Date]

Re: The Enclosed Rebate Check

Dear [Customer Name]:

Our records show that during the period from October 1, 2004 to the present, you purchased a cellular phone with service from InPhonic or one of its affiliated companies. You also applied for, but never received, a rebate in the amount of [amount of check].

InPhonic has entered into a settlement with the Federal Trade Commission regarding certain of its rebate offers. We are sending you the enclosed check in accordance with that agreement.

Please note: BY ENDORSING THE CHECK, YOU ARE AFFIRMING THAT YOU ARE ENTITLED TO ONE OR MORE REBATES, AND ARE AGREEING THAT YOU HAVE NO FURTHER CLAIMS AGAINST INPHONIC (OR ANY OF ITS SUBSIDIARIES, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) WITH REGARD TO THE REBATE(S) FOR WHICH YOU ARE BEING PAID.

For more information on this agreement, go to [link to FTC web page contain InPhonic press release].

Sincerely,

InPhonic, Inc.

InPhonic, Inc.
[Address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[Customer Address]

ATTENTION: IMPORTANT REBATE INFORMATION
REGARDING YOUR INPHONIC CELL PHONE PURCHASE