

obtain payment of the NVOCC's freight charges from the U.S. importer, in each case correctly describing the commodity based on actual contents shipped.

In addition, during time periods subsequent to the filing of Ever Freight's NVOCC tariff and bond in June 1996, Ever Freight appears both as shipper and as a carrier issuing its own (Ever Freight) NVOCC bill of lading with respect to the commodity being shipped. The rates assessed and collected by Ever Freight and its U.S. agents for these shipments, however, bear no relation to the rates set forth in Ever Freight's ATFI tariff on file with the Commission.³ Since Ever Freight has never subsequently modified its tariff rates, it would appear that all shipments in which Ever Freight issued its NVOCC bill of lading may be found to constitute violations of section 10(b)(1) of the 1984 Act.

Section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1709(a)(1), prohibits any person knowingly and willfully, directly or indirectly, by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 10(b)(1), 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than \$25,000 for each violation knowingly and willfully committed, and not more than \$5,000 for other violations. Section 13 further provides that a common carrier's tariff may be suspended for violations of section 10(b)(1) for a period not to exceed one year, while section 23 of the 1984 Act, 46 U.S.C. app. § 1721 provides for a similar suspension in the case of violations of section 10(a)(1) of the 1984 Act. Finally, section 19(b) of the 1984 Act, 46 U.S.C. app. § 1717(b), provides that the license of a freight forwarder shall be suspended or revoked if it appears that the licensee is no longer qualified to render forwarding services to the public or has willfully

failed to comply with any provisions of the 1984 Act.

Now therefore, it is ordered, That pursuant to section 10, 11, 13, 19 and 23 of the 1984 Act, 46 U.S.C. app. §§ 1709, 1710, 1712, 1717 and 1721, an investigation is instituted to determine:

(1) Whether Ever Freight International Ltd., Sigma Express Inc., and Mario Chavarria dba Transcargo International, violated section 10(a)(1) of the 1984 Act by directly or indirectly obtaining transportation at less than the rates and charges otherwise applicable through the means of misdescription of the commodities actually shipped;

(2) Whether Ever Freight International Ltd., in its capacity as a common carrier, violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC tariff;

(3) Whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, civil penalties should be assessed against Ever Freight International Ltd., Sigma Express Inc. and Mario F. Chavarria dba Transcargo International and, if so, the amount of penalties to be assessed against any or all of the parties;

(4) Whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Ever Freight International Ltd. should be suspended;

(5) Whether, in the event violations of sections 10(a)(1) of the 1984 Act are found, the freight forwarding license of Mario F. Chavarria should be suspended or revoked; and

(6) Whether, in the event violations are found, an appropriate cease and desist order should be issued against any or all of the parties.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or

other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Ever Freight International Ltd., Sigma Express Inc. and Mario F. Chavarria dba Transcargo International are designated as Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's rules of practice and procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's rules of practice and procedure, the initial decision of the Administrative Law Judge shall be issued by March 6, 1998 and the final decision of the Commission shall be issued by July 6, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 97-6038 Filed 3-10-97; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[File No. 952-3275]

Apple Computer, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to

³Since filing its tariff in the ATFI system in June 1996, Ever Freight has maintained a tariff consisting only of three classes of Cargo N.O.S. rates. Ever Freight does not publish "per container" rates, nor does it appear to charge those Cargo N.O.S. rates which it does publish, inasmuch as its rates are tariffed solely on a weight/measurement (W/M) ton basis.

final Commission approval, would require, among other things, the Cupertino, California-based computer hardware and software manufacturer to offer Power PC Upgrade Kits, at less than half the original price, to each consumer who purchased one of three of the company's entry-level "Performa" model personal computers. Apple has already agreed to rebate \$776 of the original price to consumers who have already purchased the upgrade. The complaint accompanying the consent agreement alleges that Apple misrepresented that the upgrade was available to consumers at the time that they purchased a Performa or within a reasonable period of time thereafter.

DATES: Comments must be received on or before May 12, 1997.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356-5276.

Linda Badger, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103. (415) 356-5275.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and § 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 sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for March 3, 1997), on the World Wide Web, at "<http://www.ftc.gov/os/actions/htm>." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. 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 § 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 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 record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter has focused on Apple's advertisements for the "Performa 550," "Macintosh LC 550," and "Performa 560" personal computers. The Performa 550, Macintosh LC 550, and Performa 560 models are based on the Motorola 680030 microprocessor. While continuing to promote the sale of these computers, respondent introduced a new series of computers based on the faster, more powerful "PowerPC" microprocessor.

Beginning on or about April 1, 1994, subsequent to the introduction of the PowerPC microprocessor, respondent advertised Performa 550, Macintosh LC 550, and Performa 560 computers as upgradeable to PowerPC performance. A PowerPC upgrade, however, was not offered for at least one year after Apple began representing that these computers were upgradeable. Further, by the time Apple made the upgrade available, its price approached the cost of an entirely new computer with a PowerPC microprocessor.

The proposed complaint alleges that Apple made false claims that: (1) A PowerPC upgrade was available to consumers at the time that they purchased a Performa 550 or Performa 560 computer; and (2) 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.

The proposed complaint further alleges that Apple deceptively failed to disclose that the PowerPC upgrade package for the Performa 550, Macintosh LC 550, or Performa 560 computers would include not only a PowerPC upgrade card, but also a new logic board. As a result, the complaint alleges, consumers were not aware that

they would have to incur the cost and inconvenience 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, 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.

Donald S. Clark,
Secretary.

[FR Doc. 97-6056 Filed 3-10-97; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3708]

**Victoria Bie d/b/a Body Gold;
Prohibited Trade Practices, and
Affirmative Corrective Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a California-based dietary supplement manufacturer from making certain claims for dietary supplements, without competent and reliable scientific evidence to support them; from misrepresenting the results of any test, study or research; and from representing that any testimonial or endorsement is the typical experience of users of the advertised product, unless the claim is substantiated or the respondent discloses the generally expected results clearly and prominently.

DATES: Complaint and Order issued January 22, 1997.¹

FOR FURTHER INFORMATION CONTACT: Sohni Bendiks, Federal Trade Commission, Denver Regional Office, 1961 Stout St., Suite 1523, Denver, Co. 80294. (303) 844-3923.

SUPPLEMENTARY INFORMATION: On Friday, November 15, 1996, there was published in the Federal Register, 61 FR 58559, a proposed consent agreement with analysis In the Matter of Victoria Bie d/b/a Body Gold, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,
Secretary.

[FR Doc. 97-6055 Filed 3-10-97; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3705]

Computer Business Services, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, an Indiana home-based computer business opportunity firm and three principals from misrepresenting the earnings or success rate of investors; the existence of a market for their products or services; the amount of time it would take investors to recoup their investments and from making any representation regarding the performance, benefits, efficacy or success rate of any product or service unless they possess reliable evidence to substantiate the claims. The consent order also prohibits the use of misleading testimonials or endorsements. In addition, the consent order requires that advertisements for automatic telephone dialing systems disclose federal restrictions on their use and requires the respondents to pay \$5 million in consumer redress.

DATES: Complaint and Order issued January 21, 1997.¹

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Federal Trade Commission, Chicago Regional Office, 55 East Monroe St., Suite 1860, Chicago, IL. 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Tuesday, August 27, 1996, there was published in the Federal Register, 61 FR 44061, a proposed consent agreement with analysis In the Matter of Computer Business Services, Inc., et al., for the

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, 15 U.S.C. 45)

Donald S. Clark,
Secretary.

[FR Doc. 97-6052 Filed 3-10-97; 8:45 am]

BILLING CODE 6730-01-M

[Docket C-3704]

Montana Associated Physicians, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, two Montana-based organizations from entering or attempting to enter into any agreement with physicians to: Negotiate or refuse to deal with any third-party payer; determine the terms on which physicians deal with such payers; or fix the fees charged for any physician's services. In addition, the consent order prohibits the respondents from advising physicians to raise, maintain or adjust the fees charged for their medical services, or encouraging adherence to any fee schedule for physician's services.

DATES: Complaint and Order issued January 13, 1997.¹

FOR FURTHER INFORMATION CONTACT: Robert Leibenluft, FTC/S-3115, Washington, DC 20580. (202) 326-2756.

SUPPLEMENTARY INFORMATION: On Monday, November 4, 1996, there was published in the Federal Register, 61 FR 56682, a proposed consent agreement with analysis In the Matter of Montana Associated Physicians, Inc., et al., for the purpose of soliciting public

¹ Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.