

FEDERAL TRADE COMMISSION

REBATE DEBATE

San Francisco, California

Friday, April 27, 2007

9:00 a.m.

Official Reporter: Adrian Edler

For The Record, Inc.

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P R O C E E D I N G S

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1 four panels, what we'd like you to do if you do have
2 questions is to use the question cards that are in your
3 packets. If you do, just jot down your question and
4 waive it in the air, and Linda Badger will be roaming the
5 aisles and you can pass it to her, and she'll get it to
6 the moderator. But don't worry, if there's a need for
7 extra question cards we've got more on the table over
8 there by the water.

9 In the last panel of the day there's going to
10 be a substantial period of time set aside for audience
11 participation also. That will be kind of an open mic, in
12 which you'll get a chance to make a comment or ask a
13 question of one of the panelists.

14 Everyone's input here is really important. I
15 know we have very limited spots as far as panelists are
16 concerned, and so unfortunately I had to turn down some
17 requests. But we really want your input, so it's
18 important for you to use those question cards, or
19 participate in the open mic at the end of the day.

20 Also keep in mind that there's a court
21 reporter, and so if you -- right up front, so if you are
22 speaking sometime during the day you're going to have to
23 talk through a mic so he gets -- so he hears what you
24 have to say. And also if you speak, please identify
25 yourself, that's important also. We will be, all the

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1 larger, but if you go down the hall either direction
2 you'll find them.

3 Also, I'm sure you've all seen the literature
4 table outside. We've got a lot of brochures and other
5 items that may be of interest to you. One particularly
6 neat thing is the what we call the 'business briefcase,'
7 which is this. I imagine they're already all taken by
8 now. This is a little thing that looks like a business
9 card, but it's actually a CD with several dozen of our
10 most popular brochures on it.

11 And another item on there is our ID theft --
12 [microphone interference] -- I'll keep my arm down, is
13 our ID theft magnifying glass, and the magnifying glass
14 comes in very handy for looking at all that fine print on
15 the rebate forms.

16 Lastly, I'd like to introduce a few of the FTC
17 staff who are here today, so in case anybody has any
18 questions for FTC staff or just general orientation.

19 Linda Badger, you saw.

20 Dean Graybill, from our offices there.

21 Kerry O'Brien, is right there.

22 Evan Rose, is in front here.

23 And, Lesley Fair, who you've already heard talk
24 on the phone, is there.

25 And, Mitch Katz (phonetic), is here also, he's

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1 with our press office.

2 Thanks again for coming today.

3 And I would like to present now Jeffrey
4 Klurfeld, who is the Director of the FTC's western region
5 here in San Francisco.

6 [Applause.]

7 **WELCOMING REMARKS FROM THE FTC**

8 MR. KLURFELD: As Matthew indicated, I am
9 Jeffrey Klurfeld, and I have the honor and privilege of
10 serving as the Director of the Western Region of the
11 Federal Trade Commission. And I also welcome you to the
12 Rebate, which we are pleased to be hosting here in San
13 Francisco.

14 Over the years the Federal Trade Commission has
15 brought a number of enforcement actions to remedy
16 problematic rebate practices. Because consumer
17 complaints persist, however, we thought we might take a
18 different approach, and that is by bringing everyone
19 involved in the rebate process, from the manufacturers
20 and retailers who determine to offer the rebate, to the
21 fulfillment houses who perform the back office paperwork,
22 to the consumers who wait and sometimes wait and wait for
23 receipt of their rebates, to discuss problems and
24 solutions in a 360 degree forum or debate.

25 In hosting this forum, I'm reminded of an

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1 advice book that my wife made me read when we were
2 confronting the challenges of our three somewhat
3 exuberant adolescent children. And the title perhaps
4 expresses some of the themes in the debate of rebates,
5 and perhaps also some of the perceptions regarding the
6 role of government. The title of the book is, *Get Out Of*
7 *My Life, But First Can You Take Cheryl And Me To The*
8 *Mall?*

9 [Laughter.]

10 MR. KLURFELD: You thought these were going to
11 be just dry, desicated, opening remarks. Since this is
12 also an election season I thought I might also introduce
13 some presidential history into my remarks that might also
14 reflect this tangent, and hopefully these anecdotes will
15 also entertain you.

16 When I think of free and competitive markets I
17 immediately think of Theodore Roosevelt, who was really
18 larger than life and truly a champion of vigorous free
19 markets. And as you know, he was apostrophized as the
20 "Trust Buster." Indeed, his daughter Alice, whom Teddy
21 could not manage, although he could manage the
22 government, perhaps, and whose antics would have made her
23 the poster kid for a tabloid press if there had been one
24 at that time, she remarked that her father wanted always
25 to be the bride at every wedding and the corpse at every

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1 funeral.

2 His cousin, Franklin Roosevelt, might be placed
3 at the other end of the spectrum. Franklin loved
4 regulating the economy and imposing codes and other
5 government restrictions on entire industries. But
6 Franklin got his comeuppance, and not just from the
7 Supreme Court. He often was at the receiving end of
8 Eleanor's, his wife, her rapier wit. And here is a true
9 story. After FDR's first election he took residence in
10 the White House. Eleanor thought it would be desirable
11 to get a physical check-up, and at that time there wasn't
12 a physician who was resident in the White House, so she
13 had to go out of the White House, which she did. After
14 returning from her appointment she went to see Franklin
15 in the oval office. He asked her if everything had gone
16 well, "yes," she said, then Franklin asked her if the
17 doctor had said anything about, quote, "her big fat ass."
18 Without missing a beat, Eleanor replied, "No, Franklin,
19 your name never entered the conversation."

20 [Laughter.]

21 MR. KLURFELD: Now, I have a housekeeping
22 detail, and that is -- whoops. It's part of my duties to
23 animate and pump you up in the morning. We really do
24 want to hear from all of you, and we have designed a
25 rebate form of our own, hold it up, it's in your packets.

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1 And what we would like you to do is to fill it out, and
2 you will notice that there are a place where you can
3 indicate what your three biggest gripes are with rebates.
4 It's essential that you provide this to us, if you are
5 willing to do so, in anticipation of the last panel, when
6 we are going to reveal the results. You can either put
7 it in the boxes, which Matthew will now point to.

8 MR. GOLD: One right over there by the water,
9 and one on the other box on the tables over there.

10 MR. KLURFELD: I have the honor of, you know,
11 turning the letters to get a vowel, or something like
12 that. Or you can give it to Kerry, Linda, or Matt, whom
13 I also would like to recognize for their yeoman-like
14 work, as well as other members of my staff, in organizing
15 this.

16 So before you go to lunch, if you could
17 complete that out and give it to them, that would be
18 great.

19 And then I am also privileged to introduce our
20 first speaker. She is Eileen Harrington. Eileen is the
21 Deputy Director of the FTC Bureau of Consumer Protection
22 in Washington, and in that capacity she is the nation's
23 number two consumer protection enforcement official. Her
24 presence here today is eloquent testimony to the
25 importance of this event. Often people do not live up to

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1 their reputations when you get close. In Eileen's case
2 this is certainly not true. She personifies intelligence
3 and insight, she also has grace and gumption, and the
4 American people is indebted to her for her strong and
5 able leadership. Among her many distinctions is her
6 service to America for her role in establishing the
7 national Do Not Call Registry, and that is a gift that
8 continues to give, as we know.

9 Anyway, it's my pleasure to turn the podium
10 over to Eileen.

11 [Applause.]

12 MS. HARRINGTON: Thank you very much, Jeffrey.

13 I'll just get the mic up here. It really is
14 such a privilege to be here today with all of you. And I
15 want to begin by echoing and maybe even elaborating on
16 what Jeffrey said about the incredibly good work that the
17 team that has organized, that really conceived of this
18 gathering and has put it together, have done: Matthew
19 Gold, Linda Badger, Kerry O'Brien are the rebate team in
20 our western regional office. And they, although we all
21 serve the public and we are one FTC, I would say they own
22 this issue and have done such good work developing
23 principles, reaching out, learning, listening, and
24 leading.

25 And so I want to commend them as well as my

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1 other colleagues who are playing leadership roles here
2 today: Joe Mulholland from our Bureau of Economics is out
3 from Washington; Lesley Fair, who is simply the most
4 talented person at the Federal Trade Commission in a
5 whole stable of talented people there's nobody like
6 Lesley, as you will see later on; Mitch Katz is here from
7 our Office of Public Affairs; Dean Graybr4o.from our
8 western region also will be presenting today. And if
9 I've left anyone out in terms of the leadership group, I
10 apologize. But what a good group, Jeffrey, you and Erica
11 have here.

12 We're here today to do two of the things
13 that -- to serve two of the functions that the Federal
14 Trade Commission carries out that we value highly and
15 take seriously. One of those is to study the
16 marketplace, to understand what it is that's happening,
17 to learn from people who are directly effected and are
18 participating, so that we can do our jobs better. And
19 the other function that we are here to carry out, and
20 that we take so seriously, is our function in the area of

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1 practices in the marketplace, is the enforcement prong.
2 And this morning I am announcing that the FTC has reached
3 and is issuing today two consent decrees with companies
4 to correct deceptive or unfair practices that they
5 engaged in, we allege, in connection with rebate offers.
6 And Matt has the press releases, which he'll be passing
7 out so that you can read them, and pay absolutely no
8 attention to what it is that I'm about to say.

9 [Laughter.]

10 MS. HARRINGTON: The first of the consent
11 agreements that we're announcing this morning is with
12 InPhonic, which is the largest online seller of cell
13 phones and cell phone calling plans. The settlement with
14 InPhonic stands for the principle that consumers must be
15 put on notice in advertisements that offer rebates that
16 the terms of the rebate program may be unusual,
17 complicated, significantly different than what a consumer
might reasonably expect from reading the advertisement of

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1 to adequately disclose, was with the hyperlink on the
2 website to the terms and conditions of the rebate offer.
3 The hyperlink did not satisfy the Commission standard for
4 adequate disclosure under Section 5. The best
5 articulation of that standard is in some work that really
6 was groundbreaking, that was done as a result of this
7 kind of workshop that the Commission held in 2000, and
8 that resulted in the development of a really important
9 publication, *The Dot Com Disclosure Guide*, which is in
10 the business briefcase that we have out front. So if you
11 haven't picked up that little disk that Matthew held up,
12 do it, and look at the *Dot Com Disclosure Guide*, because
13 in this case that is really the basis for the
14 Commission's analysis that the disclosures were not
15 adequate.

16 Let me read to you from the *Dot Com Disclosure*
17 *Guides*, which say that, 'you have label the link to
18 convey the importance, nature, and relevance of the
19 information it leads to. That is, the label should make
20 clear that the link is related to a particular
21 advertising claim or product, and indicate the nature to
22 be found by clicking on it. Some text links may provide
23 no indication about why a claim is qualified, or the
24 nature of the disclosure. In most cases simply
25 hyperlinking a single word or phrase in the text of an ad

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1 The Soyo settlement stands for the principle
2 that rebate delivery promises have to be met. The
3 promises you make you have to keep them. Now, the
4 Commission has made this point in earlier settlements and
5 it restates it in this case, where the promise was that
6 consumers would receive their rebate within ten to twelve
7 weeks. Ninety-five percent of consumers who receive
8 rebates in this promotion received them outside of and
9 beyond the twelve-week outer limit that was promised.
10 The average was twenty-four weeks, and some waited for a
11 year. Not good.

12 Now, we are very proud of our folks in the
13 western region who did these cases. The Commission will
14 stay on the beat in this and other areas, but really
15 would be happy to never again bring another rebate
16 enforcement action. And that's why we're here. We want
17 to understand from the people who are most knowledgeable
18 what the best practices are. We want to talk about how
19 the best practices might get even more best. We want to
20 understand what the consumer perspective is. And we want
21 to, as Jeffrey said, work with all of the stakeholders to
22 see to it that rebate offers which have tremendous
23 benefit for manufacturers, for retailers, for consumers,
24 alike, are made in a way that satisfies the promise and
25 does not cause us down the road to have to announce more

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1 **PANEL 1: AN OVERVIEW OF REBATES**

2 MR. MULHOLLAND: Good morning. I'm on? Okay.
3 Good morning, I'm Joe Mulholland. I'm an economist at
4 the Bureau of Economics and the Federal Trade Commission.
5 And I'll start off by saying I too would like to thank
6 Matt, Linda, and Kerry for putting together this
7 conference and for inviting me out here to moderate.

8 The issues raised by rebates are important and
9 have a good deal of economics content. The Bureau of
10 Economics hosted a conference last week that featured a
11 number of prominent behavioral economists who discussed
12 the research into various psychological aspects of
13 consumer behavior, and the policy implications of the
14 findings for consumer protection policy. One important
15 area of research involved the way consumers make correct,
16 incorrect, and often overly optimistic projections of
17 their future behavior. One manifestation of which, of
18 course, is the failure to follow through on the initial
19 intention to redeem a rebate.

20 This first session here seeks to set the stage
21 for the ensuing discussion of the various policy issues
22 involved involving rebates by describing how rebates
23 work, how they evolved, how they're used by consumers,
24 and how they effect the profitability of the various
25 stage of the product stage chain.

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1 I think our three panelists are ideally
2 situated to provide this kind of overview for this
3 session. We're going to first of all look at consumer
4 behavior, how consumers respond to rebates, and how often

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1 consumer psychologist, and what I really care about is
2 understanding what drives people's purchase and
3 redemption behavior in the rebate context.

4 So I'm going to show you results from two
5 sources of data. I've got some industry data, over 3,000
6 promotions which can give insights into incremental sales
7 and redemption. And then I run some experiments with
8 people, with their own real money, with over 1,000
9 consumers trying to look at what mechanisms are kind of
10 influencing their purchase decisions and their redemption
11 behavior.

12 So I'm going to start off here with some
13 industry data. Sorry. Whereabouts is the? Oh, I didn't
14 see that. Right there? Oh, all right, very good, okay.
15 So what I'm going to show you first is some industry data
16 from over 3,000 promotions. Sorry for the feedback here.
17 Okay. Can you hear me still? Okay.

18 So what we have here, we have the percent
19 sales. So this is basically what the industry will call
20 lift or increase in sales. And what I'm plotting here is
21 the lift that occurs from a \$1 rebate. What I have along
22 the bottom here is what that \$1 rebate represents as a
23 percentage off the list price. So down here we have say
24 a 25 percent discount, which means it would be a \$1
25 rebate on a \$4 offer. Here we'd have a 50 percent

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1 discount, so it would be a \$1 rebate on a \$2 offer,
2 etcetera. And what you find here is people are very
3 sensitive to the change in the discount percentage. So
4 this is still all just a \$1 offer, but as that \$1
5 represents a greater percentage of the list price people
6 respond to that offer.

7 Now what we're going to show next is what
8 happens when you increase the absolute size of the rebate
9 and go to a \$5 offer. And what we'd expect is we'd see a
10 big jump in lift because it's five times larger the
11 offer. What we find is there is an increase, but it's
12 not a very strong increase. It's significant, but the
13 point here is that it kind of shows the same pattern as
14 the \$1 offer. So people are incredibly sensitive to the
15 percentage of the list price that the rebate represents.
16 [Tape interference.] Jesus, sorry. Very sensitive. But
17 they're not that sensitive to the absolute value.

18 And so here's the \$10. Of course, you don't
19 see a lot of \$10 offers that represent more than 50
20 percent of the list price, which is why it just stops
21 here. And then there's a \$20 offer.

22 So the point here is that it's the percentage
23 of the discount, not necessarily the absolute value of
24 the rebate that seems to be driving the incremental
25 sales. All right. And that they're increasingly

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1 had from buying the offer to mailing. And when we give
2 people more time they become more confident. So, again,
3 confidence goes up and as a result you see higher
4 purchase rates. And so what you've got here is over time
5 as you increase the time you've got more people buying,
6 but there's also the effect of the size of the discount
7 percentage maintained. All right.

8 So you can either increase the size of the
9 discount percentage, you can also give people more time.
10 And the point here is that people tend to discount effort
11 that occurs in the future. When things are 21 days away,
12 ah, no problem, it seems easy, you know. What we call a
13 temporal construal effect in psychology, that explains
14 when things are far in the future we basically abstract
15 them and they seem really easy. All right.

16 The other thing which I won't show on a graph
17 here is if you conceal the application requirements
18 people become more confident and they're more likely to
19 buy. So I manipulated whether or not there was a
20 detailed description of all the things they had to do to
21 redeem the rebate, whether that was present or absent
22 when they made the purchase decision. And when you
23 disclose what's required to be done confidence drops,
24 less people buy. Okay. So the point here is that when
25 you don't disclose the effort it's not salient. And

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1 combine the fact that if it's far in the future it seems
2 really easy. So you really do have to give consumers,
3 you know, really detailed information in order for them
4 to really improve their calibration.

5 So the question now is what drives redemption
6 rates? So the point here is being highly confident
7 doesn't necessarily predict your redemption behavior. So
8 what I've done here is I've grouped the people that
9 actually were successful in redeeming in dark, the people
10 that weren't successful redeemers in light blue. And if
11 I go back and say well maybe the reason that they didn't
12 redeem was that, sure average confidence was high, but
13 the people that didn't redeem were probably lower in
14 their confidence than the ones that were successful. And
15 we find, no, that's not the case. There's no difference.
16 So being highly confident is not predicting what you're
17 going to do. The people that failed to redeem were just
18 as confident as those that were successful. All right.
19 And when we look at their redemption rate estimates,
20 again, there's no difference.

21 So this is what we call like a mis-calibrated
22 consumer. You're highly confident, but your own
23 probability of redemption is in fact very low. All
24 right. And so this is an overconfidence problem.

25 And so the question is, what's driving

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1 they start and they realize, wow, how much work it is,
2 they get done sooner, they don't delay in finishing the
3 process. So there's a backlash effect.

4 I've got to wrap up. So I'm just going to go
5 to the last points here. I'd be happy to talk with any
6 of you if you have questions.

7 Repeat purchase. Among redeemers it was 40
8 percent. We had people return and had a chance to
9 purchase the same offer again. So we wanted to look at,
10 you know, do you learn from your mistakes. Non-
11 redeemers, only 8 percent of those bought. But the
12 people that were successful, 40 percent of them bought.
13 If you're in the high effort group you're much less
14 likely to buy.

15 So the point here is that if you're ranking the
16 effort up on people there's an opportunity that you could
17 actually be increasing your redemption rates, rather than
18 decreasing them, and then you're angering people and
19 they're not buying the second time around. So there's no
20 loyalty.

21 So just to wrap up. Confidence in redeeming
22 drives purchase. Consumers tend to be overconfident,
23 it's a function of the discount percentage, the deadline
24 length and the disclosure of the application
25 requirements, many fail to initiate the application

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1 process. And so maybe we're over-emphasizing the role of
2 effort here. Much of breakage comes from people that
3 never initiate the process, they didn't experience any
4 effort. So increasing or decreasing the amount of work
5 they do won't influence those people because they're not
6 even starting the process.

7 And then high-effort rebates can be risky, can
8 motivate higher redemption rates, there's a backlash
9 effect that we found, repeat purchase, less likely.

10 But when we disclose the effort required that
11 backlash effect goes away. Why? We're not violating
12 expectations, people know what they're getting into.

13 So sorry for to rush through that. But I'd be
14 happy to speak with any of you. And for those of you in
15 industry, love to hear of your results show these
16 patterns or if they differ. Thank you.

17 MR. MULHOLLAND: Now we're going to talk about
18 the nuts and bolts of the fulfillment process itself for
19 rebates. And here is Tom Diffley. Tom is Executive
20 Vice-President of Business Development at Helgeson
21 Enterprises. He has ten years of experience in promotion
22 fulfillment with multiple service providers, providing
23 directly -- working directly with large and small
24 retailers, and market package goods, consumers
25 electronics, and wireless services.

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1 MR. DIFFLEY: Good morning. My name's Tom
2 Diffley, and I have been in promotion fulfillment for the
3 last ten years. So I thought I would start by
4 introducing you to promotion fulfillment. And there are
5 a number of terms that we use within our industry that
6 you may or may not have heard before. So I thought it
7 might be helpful if we would start with those.

8 First of all, customers are the people with
9 whom we are interacting, as opposed to the general pool
10 of consumers. You can think of a customer as somebody
11 who has actually made a purchase from one of our clients.

12
13 A client are the people who hire us. And in
14 most cases they are manufacturers, service providers, and
15 retailers or E-tailers. And these are also companies who
16 fund the rebates. So they are the people, they are the
17 people who are paying the customers.

18 Fulfillment company, what we are, we are the
19 third party who processes the request from the customers
20 and we ship whatever it is that the customer wants back
21 to those customers. We're also known as fulfillment
22 houses, fulfillment services providers, or FSPs, and
23 we're also simply called rebate processors.

24 Promotions are what these customers get
25 involved in. And I specialize in consumer-based

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1 fulfillment and consumer-based promotions. There are
2 other types of fulfillment out there. But these
3 consumer-based offers call to action the customer to buy
4 a product or service right now. These are also called
5 promos, offers, deals, rebates.

6 And a rebate is a particular type of promotion
7 where the customer receives a rebate check or a rebate
8 card back by mail. These are also called MIRs, or mail-
9 in rebates.

10 And a premium offer is a slightly different
11 type of offer, and that's where the customer receives an
12 item back by mail, or I guess via any courier. But this
13 is as opposed to a rebate check.

14 And then invalid submissions are submissions
15 that we have received from customers, but the customers
16 didn't do everything that they were supposed to do. This
17 is as opposed to customers who simply didn't participate
18 in the process. But these customers who have mailed to
19 us and didn't do what they are supposed to do, those
20 submissions can be called invalid, disqualified,
21 unqualified, rejected, non-compliant, a number of
22 different expressions. But they all mean the same thing.

23 First of all, what are fulfillment companies
24 and what do we do? We get involved when our clients or
25 our prospective clients want to run a promotion and they

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1 require a third party like us to process the submissions.
2 The companies running rebates typically don't have the
3 facilities or the interest or the systems in place to
4 process rebates, so they hire us to take over that, to
5 take over all that interaction with the customer. And
6 what we do, is we set up all of the different customer
7 contact points. So where the customer may believe that
8 he or she is dealing with a manufacturer or a service
9 provider or a retailer or E-tailer, they are actually
10 dealing with us.

11 So we are the PO Box, we are the telephone
12 number, the email address. And we are also the

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1 a status inquiry. And then after a customer has
2 participated we also support that customer via the phone
3 or via the web. And if the customer has made a mistake
4 we help that customer understand what the requirement was
5 that he or she missed, and we help him or her get the
6 materials together.

7 There are a few things that we are not. We are
8 not the organization that creates the promotion. Our
9 clients create the promotions. We are not out there, in
10 most cases, actively promoting promotions. Typically our
11 clients and prospective clients come to us with a need
12 already.

13 We do not make the rules for qualification. We
14 follow the rules. We can advise our clients on how to
15 set up the rules to make things less burdensome for the
16 customers, and make it a more pleasant experience. But
17 ultimately it is the client who makes that decision.

18 I'm not advancing.

19 We do not have a financial stake in the
20 promotions. And I read on, I read on blogs, I read just
21 a number of different things out there, even some
22 published statements by politicians, that seems to imply
23 that we have some motivation to disqualify customers who
24 send in. We process submissions, and it isn't of any
25 interest to us whether the customer qualifies or

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1 disqualifies, we are process -- or we are paid to process
2 submissions and take telephone calls. So whether we are
3 mailing a check or whether we are mailing a reject letter
4 to that customer is immaterial to us. We will get paid
5 either way.

6 And also I get all sorts of telephone calls
7 from prospective clients, from the press, people asking
8 me -- they almost always lead with the same question,
9 especially the press -- and the question is what

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1 at rebates today we're probably all thinking about
2 consumer electronics and rebates on hardware and software

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1 shipping and handling. When you took a look at the 1.95
2 to get the Tony the Tiger pack to you, or the 3.95, that
3 was, that was our part of it. So the 3.95 was our
4 shipping and handling and we were shipping and handling.

5 It's also possible that they've evolved from
6 try-me-free offers, which were pretty common with
7 packaged goods, where if you bought two of the packaged
8 good you would get the cost of one of those back by mail.
9 And it's possible that you folks who offer consumer
10 electronics products saw those offers, saw they were
11 effective, and just got rid of the whole buy two of them
12 and get the cost of one back by mail.

13 And then also I think they've evolved from
14 coupons. And that it's coupons are a promotional tool
15 that were simply not available with some of these
16 consumer electronics retailers up until even just a few
17 years ago.

18 In the last ten years I've seen a number of
19 changes with mail-in rebates. Years ago the rebate
20 amounts were quite small, it was very common to see one
21 \$2 to \$10 rebates. You may see a few of those today.
22 But for the most part the rebate amounts are considerably
23 higher now.

24 There's another type of offer which is pretty
25 common now, too, and those are rebates on services, as

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1 opposed to just rebates on products. And with services
2 will typically come probation periods where you ask the
3 customer to wait a period of time to prove that you are
4 still on contract, or a customer in good standing, before
5 you're eligible for the rebate.

6 Ten years ago there was another type of
7 promotion, which was you would mail away for a kit, or
8 you would mail away -- what was really popular was
9 mailing away for a cookbook. Some of these offers would
10 take place around the holidays, they were extremely high
11 volume offers. And that type of promotion has
12 essentially been eliminated by the web. There is
13 absolutely no need to mail away for those items any more.
14 You can go download those items on the web now.

15 Ten years ago there were, there were
16 essentially a lack of, well, the technology didn't exist
17 to communicate with a customer in a couple of additional
18 ways that we're able to do today. For example, IVR
19 wasn't as popular, so we're now able to make IVR

15

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1 And this is something that I find is almost
2 ironic, but the same small office home office products
3 that have become so popular with rebates, and that have
4 been the highest volume rebaters, are actually the
5 products, and the services that made it possible for
6 customers to voice their concerns about rebates.

7 And on average what I watched, in a well-
8 constructed offer roughly 90 percent of customers will
9 qualify. In other words, if we receive 100 pieces of
10 mail about 90 percent of those pieces of mail will
11 qualify. And I haven't seen that number change much over
12 the past 10 years.

13 And then I can speculate a little bit about how
14 rebates will continue to change, at least some things
15 that I hope are going to change. I hope that clients
16 will -- our clients will continue to fund rebates faster
17 so that we can get checks out to customers more quickly.

18 There is a great deal of pricing pressure on
19 us, the fulfillment companies. So I suspect that we'll
20 see more and more outsourcing of various parts of our
21 process.

22 Premium items today exist, but I think they're
23 almost going to go away. A couple of different factors:
24 their shipping expense, the availability of the product.
25 Now let's say laptop batteries, for example, are really a

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1 Matt and Kerry and Linda and Joe for inviting me here to
2 speak. I didn't realize they were turning people down
3 for panels, or I might be out there with you. And things
4 like that.

5 I've been asked to kind of come and comment
6 about ten reasons why, why do we do this, and what
7 motivates us from a manufacturer's perspective and
8 things. You've gotten a lot of insight already from the
9 previous speakers.

10 The thing and in Tim's position, the first
11 reason, and by far the most powerful reason is what we
12 call demand generation. If the three rules of real
13 estate are location, location, location, the three rules
14 for us as rebate providers is demand generation, demand
15 generation, demand generation. To draw attention to your
16 products to increase sales to get the lift that Tim
17 talked about.

18 I also wanted to touch on why we do it. Also I
19 will be speaking to some of the challenges we see when we
20 do it. We obviously want to do it. They allow us to
21 target and see a return on an investment on an effort, on
22 a promotion. What do you get back for what you've done.
23 You see the lift and you can measure it and quantify it.

24 It's challenging to administer, because one
25 reason we're here debating, consumers sometimes find the

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1 process frustrating.

2 We also in a regulatory environment have not
3 only the Commission watching us, but numerous state
4 regulators and enforcers, and a plaintiff's bar looking
5 at you carefully. And there are numerous state statutes
6 around price optics and things, so things you can do in
7 general you'd like to nationwide you have to watch your
8 marketing collateral. HP is gifted with a very vibrant
9 and lively channel, which helps us a great deal with
10 that, because they actually practice and work in those
11 areas and can often inform us of those concerns.

12 And speaking of that, I would note as I got
13 here without the hearing the FTC standard disclaimer
14 about things. I would offer one of my own, I'm going to
15 do my best to answer your questions and talk about our
16 practices. I have some limits around confidentiality and
17 privacy of our resellers and customers that may limit
18 what I can say here today, or how far my comments might
19 be read.

20 Number two, is the competitive response.
21 What's going on there is not only that boy we're doing it
22 because my brother's doing it, and I know how much Lesley
23 and Eileen love hearing that explanation. But it also
24 goes into the area of rebates allow somebody,
25 particularly with a long lead time and sell-in, like with

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1 a lot of our products, to react to things in the
2 marketplace. Someone may be coming out, someone who may
3 have provided this laptop to the FTC. Because of the
4 nature of their selling motions on the internet can price
5 and do things much more dynamically than somebody who
6 operates primarily through a channel.

7 So throwing a rebate at something, promoting it
8 and developing it allows you to help respond to pricing
9 pressure and makes of technology that's out there.

10 That's something that's very important to us.

11 Number three, improve and change the customer
12 experience. This touches on what Tom was talking on of
13 premium products primarily. A lot of our rebate offers
14 when they were premiums in the premium area give you a
15 taste or example, a prime example is an HP media pack of
16 new and different paper. Maybe you will use your
17 technology in a way you hadn't envisioned before. Maybe
18 we'll give you some software that will expand the time
19 you spend with it, and surprise and delight you with how
20 you'd do it.

21 I would take a little issue with one of the
22 things Tom said about the web doing it in because it's

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1 it's very hard to control your target and demand on it.
2 Word gets out about these things. And we have had a lot
3 of dissatisfaction from our channel and from customers
4 when you run short of the product. And even when you
5 follow your mail order rule and do everything and notify
6 you're going to get it to them, if people want their
7 Halloween cookbook and pumpkin printing card ideas they
8 really, you know, and marketers heard me explain this,
 they don't want it in November. Right? So it is a risk

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1 about an advertised or promoted rebate it allows their
2 customer service representative to say, hey, you know,
3 you're interested in that, here's a complimentary
4 product, or here's something else that may help a
5 talented reseller who manages a market basket approach to
6 a customer a way to maximize their interest, and
7 hopefully add greater services or products to what their
8 customer might be leaving their store with.

9 For us, obviously, and again mindful of
10 concerns over consumer privacy, and HP is a strong opt-in
11 company, you checked off the box and hopefully you will
12 invite us to entice you with more rewarding and
13 delightful offers about the product you just purchased
14 from us, and you'll do that as part of the rebate
15 service.

16 Tom also talked about web fulfillment. And
17 that interaction where you're now being sent messages
18 back and forth, it's an idea to show you that we progress
19 and care. And the point was also made about particularly
20 in technology products we give you the means to
21 communicate with us and talk with us about it, and
22 customer touch in developing some of the ways to help
23 teach you and familiarize you with the capabilities of
24 your product.

25 Market expectations. This is a kind of general

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expects you to do it. Again, rebates in the auto

industry is a prime example. Being invited to come speak
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At this panel has caused me to focus a little bit more at

wherein the hearing for these offers so. A couple of weeks ago

1 well over seven years, I am amazed at hearing why people
2 submit rebates and what they do with them. And we get,
3 you know, we do get complaints, plenty of them. But we
4 also get lots of thank you's. And it is fascinating to
5 me how internal domestic economics, you know, somebody --
6 we have acquaintances who use it to fund college
7 education. I find that not advisable, but interesting,
8 interesting.

9 [Laughter.]

10 MR. PATTERSON: There are others who use it for
11 a night out, you know, comes in, thank you, kind of
12 thing. Also people who count on it. Again, in a
13 business like ours with a consumable business attached to
14 it to fund the next purchase of the consumable, and it
15 kind of makes them feel better about spending that kind
16 of money on that. Just kind of interesting.

17 Finally, or not finally, next, the brand.
18 Classic area here is bundled rebates, where if you can
19 present a compelling package of rebates to a reseller or
20 to customers you might draw more attention in a Sunday
21 circular, you might draw it in store. It might be
22 very -- somebody might realize, oh HP, they do hand-helds
23 as well. The Commission knows all about that. But you
24 have a chance to kind of hopefully aggregate your share
25 of eyeballs or your share of customer awareness.

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1 It's something as an adult survivor of a
2 kitchen remodel, why all the appliances in my kitchen I
3 couldn't make a decision, but oh there was a group rebate
4 on it.

5 Being it's time to wrap up. The final one is a
6 marketing alliance idea. The best example in technology
7 that many of you are familiar with, and regulators are
8 familiar with, is the internet service provider offer
9 that drew a lot of attention at the height of the dot com
10 boom, and continues, that you try and partner with
11 another brand that's on the move or on the rise, and it
12 shows that you are compelling and interesting in today's
13 market.

14 Many of you have one of these. I'm holding up
15 a cellular telephone. For the record, that is turned
16 off, Lesley. And you're aware that you see the service
17 provider and the handset provider put something together
18 to kind of make a really compelling choice in that kind
19 of thing.

20 So the final thing to wrap up, for those of you
21 who are bored in your next conference call, go to
22 YouTube, search the word *rebate*, and you'll see something
23 that will touch on Tom's point about how long these have
24 been around. And, again, observe all intellectual
25 property laws. You will see a Bill Cosby ad for a Texas

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1 Instruments personal computer touting a mail-in rebate.
2 It's got to be early Cosby Show era, and he's sitting
3 there and the bulk of the commercial is explaining how to
4 file for a rebate, like you call, and it's totally
5 different from where consumers are now. And thinking
6 about it you'll also see a Portugese hand game called
7 *Rabatae* (phonetic), and then you will, you will also see
8 a five-minute seven-second blues jazz riff from a
9 disgruntled customer of a cellular telephone rebate,
10 which is entertaining, and, again, puts something towards
11 the manufacturers of something else we need to be aware
12 of of how someone can comment on what we're doing.

13 Thanks

14 [Applause.]

15 MR. MULHOLLAND: Thanks, Stuart. We're going
16 to open it up for questions. And I wanted to start with
17 a visitor.

18 MR. SYME: Thank you very much. My name is
19 John Syme, I'm a lawyer with the Department of Justice
20 from Canada. And I had a question for Professor Silk in
21 relation to how consumers value rebate offers as compared
22 to offers of a straight sale price type representation.
23 And I'm wondering whether or not there are any studies
24 that look at that issue, and look at sort of transaction
25 utility in terms of, for example, on a given product

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1 whether or not a consumer would value a rebate offer of
2 say 40 percent at say and compare that to say a 30
3 percent or 20 percent straight sale price offer on that
4 same product.

5 MR. SILK: To my knowledge there's nothing
6 that's done that. I've run some studies where I had the
7 same percentage off, and I ran it as a sale versus a

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1 reporting. So this data is available to the client at
2 all times. And part of it is reinforced through the
3 invoicing process, because when we're looking for funding
4 we have to provide invoices to the client for those
5 customers who've qualified as well as the supporting
6 documentation or, yeah, I guess the supporting data, for
7 those qualifying customers.

8 Does that answer the question?

9 MR. MULHOLLAND: Yeah, okay.

10 MR. PATTERSON: So I guess my answer is pretty
11 much the same. I mean, we manage our rebate vendor of
12 which there is normally primarily only one, for
13 simplicity sake, in the consumer space at least. You
14 know, there are regular audits to see how well they're
performing and how soon we're getting things out. There

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1 would make to that kind of treatment to customers is you
2 are serious about your brand and in your interest it is
3 far less expensive to pay a rebate to a nonqualified
4 person than to anger a customer who potentially needs to
5 come back and buy your brand again. And that tends to be
6 our philosophy going forward with the eye towards there
7 is the issue on the other side of consumer fraud. That
8 there are people who are brilliant at working ours or our
9 fulfillment house's systems to get more than they're
10 entitled to by leaps and bounds. So it's a tension
11 there.

12 MR. MULHOLLAND: We have room, we have time for
13 one more question. Is there any question from the
14 audience?

15 MR. GLASSER: Well, first I'd like to just say
16 very quickly to Mr. Silk -- I'm sorry? Oh yes, Roy
17 Glasser, E-journalist and consumer advocate.

18 First, I got to speak very quickly to Mr. Silk.
19 I was very impressed with everything you said, but my
20 research doesn't match yours.

21 I find that there are three types of rebate
22 people. One of those, one is people who are buying
23 something they really need like a washing machine or a
24 refrigerator, and their response is going to be one kind.
25 The second kind of rebate are the free after rebate, and

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1 the response from that is going to be much higher. And
2 the third kind I would refer to simply as the casual
3 rebate, and that kind of response is going to be much
4 lower, some of those people don't care. And in both of
5 the last two categories there are people who specifically
6 are looking at the price because -- I'll get to that in a
7 moment, but they are looking at the price and decide to
8 buy solely on the price instead of and knowing they're
9 not going to submit the rebate.

10 As far as the price goes, I see that even
11 though items are coming up for sale and it's illegal to
12 change the list price for the sale, the list prices are
13 being changed for the sale, as though there's a
14 difference in mark. Sometimes it goes up, sometimes it
15 goes down.

16 I'd like to speak very quickly now to
17 Mr. Diffley. You said that you don't have an interest in
18 disqualifying rebates. You're an exception, sir. Some
19 of the rebate processors advertise the high rejection
20 rates as high as 25 percent that they have, in order to
21 solicit business. I don't want to mention a company
22 because someone from Parago will be here speaking, but
23 this is happening, and not just from one company.

24 So if I could? Well, I've taken up enough
25 time. Somebody else wants to speak.

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1 MR. MULHOLLAND: Well, thank you very much.
2 This marks the end of this session. I'd like to thank
3 all three panelists. I think this was very informative.

4 [Applause.]

5 MR. MULHOLLAND: And very much sets the stage
6 for the remaining sessions. We'll take a 15 minute break
7 now. And I would remind you again about filling out that
8 survey, because that would really help for the afternoon
9 session. 10:30.

10 Okay, 10:30, please for coming back.

11 (BREAK)

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PANEL 2: REBATES: OPEN THE ENVELOPE AND CUT THE

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1

CHECK: WHAT COULD GO WRONG?

MS. O'BRIEN: -- Federal Trade Commission, and

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1 consumer.

2 We also have with us Hal Stinchfield, who is a
3 recognized expert in the field of rebate advertising.
4 Currently he's working as a consultant working with
5 marketers to develop and deliver more consumer-friendly
6 rebate offers. So Hal today is sort of our eyes of the
7 industry.

8 And finally, with us is my colleague Dean
9 Graybill of the FTC. And he's going to be giving us a
10 sort of law enforcement view of rebate advertising, and
11 explain some of the bad consequences that can be
12 [microphone interference] that fail to keep their rebate
13 promises.

14 Of course, we all know the saying we learn from
15 our mistakes, and hopefully during this panel we'll be
16 able to learn from the mistakes of others.

17 So without further ado, I'll put on Joe,
18 [microphone interference] before I get electrocuted.

19 MR. RIDOUT: Good morning. Can everybody hear
20 back there? Might give it a little more. Thanks a lot
21 for having me. It's a great honor to be here. My name's
22 Joe Ridout. I'm with Consumer Action, as was mentioned.
23 We're a consumer defense and education group that sends
24 out about two million pieces of free information to
25 consumers and other groups all over the country, and up

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1 to eight different languages every year.

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1 We're seeing a couple of retailers getting out of the
2 rebate business, but many retailers still see rebates as
3 attractive because they get to induce sticker swoon, the
4 opposite of sticker shock, and entice consumers into
5 buying products they might not always have been disposed
6 to do so. Retailers can reap the benefits of advertising
7 a lower price than they necessarily have to deliver to
8 everyone.

9 Consumers for their part can find a terrific
10 deal on certain items, but they often face a series of
11 confusing and irritating obstacles in order to claim
12 their rebate. For example, a rebate customer customarily
13 must save the receipt, obtain the proper form or forms,
14 fill out the paperwork completely, enter the product
15 codes or offer codes, dissect the box the item came in,
16 and submit the proper UPC code, send in all the
17 documentation under the deadline, wait for a check to
18 arrive months later probably will look a lot like junk
19 mail, and then cash or deposit the check before it
20 expires in a short amount of time. So consumers are
21 faced with what seems at times like an endurance race of
22 hoop jumping, and it's not a surprise that problems arise
23 along the way.

24 It's no secret that many rebate companies try
25 to encourage mistakes on the part of consumers. We

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1 recently saw on the part of Parago, the company behind
2 Circuit City rebates, receive patent number 7120591 for a
3 rebate processing system. This is from the application:

4 'The rebate processing system provides a user friendly
5 interface, yet retains hurtles sufficient to maintain
6 breakage.' Breakage, of course, rebate denials.

7 Consumers do make mistakes, and that's a lot of the
8 reason why rebates go bad, to be sure. But that's just
9 part of the story. And there are a lot of companies
10 spending a lot of time and money trying to maximize how
11 many of those mistakes consumers can make, and increase
12 breakage, or rebate denials.

13 This is more from the application. 'By
14 requiring post-purchase activities, the rebate offer
15 attempts to reduce the number of successful rebate
16 claimants.' And it goes on, 'Because rebate programs
17 offer the potential for breakage, manufacturers can offer
18 more valuable rebates compared to a straight reduction
19 product price.'

20 So it's no secret. Some rebate companies
21 freely admit that they are in the business of
22 discouraging or denying rebates, as much as they are in
23 the business of fulfilling rebates. And to be sure, some
24 consumers are trying to game the system as well. It's
25 not as though there's one party completely out to dupe

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1 the other, it's more the system being a game than
2 consumers or the industry trying to game the system.
3 There's a number of consumer websites out there, for
4 example, that try to identify free after rebate items, or
5 even unusual circumstances where someone could actually
6 make money by buying a product, presuming that all the
7 rebates go according to plan.

8 So sometimes, in some ways rebates can
9 represent a strange convergence between consumers who
10 want something for nothing and companies who want to give
11 nothing for something that they promised as part of the
12 original deal. So not surprising, this leads to a lot of
13 problems. And I'll go into discussing how these impact
14 consumers, and what we've heard from people about these
15 experiences.

16 As I said, we maintain a hotline at Consumer
17 Action where people call in and report what kinds of
18 experiences they have, negative or positive. Some of the
19 main rebate issues we hear are about items that were
20 purchased as a gift, and they failed to qualify for the
21 rebate because the original box went to the gift
22 recipient, and they were unable to redeem their rebate.
23 Rebate checks that were supposed to be mailed within say
24 three months and arrived say nine months. These are all
25 garden-variety complaints. We get forms that were

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1 properly completed but then denied.

2 Some of the more interesting ones involve a
3 problem with the packaging or lack of information about
4 what the rebate form should include. We heard from one
5 consumer recently who bought a memory card and was
6 eligible for two different \$20 rebates. On each form he
7 had to put the serial number of the card. He couldn't
8 find out where exactly the serial number was, so he
9 included the number on the side of the box thinking it
10 would be the best solution. It turned out the number was
11 etched on the card itself, and it was a number you
12 couldn't actually see with the naked eye, you needed a
13 magnifying glass to see it. So better disclosure in
14 these kinds of cases about where to put the pertinent
15 information on rebate forms is really the least we should
16 expect going forward.

17 Some consumers, it's interesting, find rebate
18 forms so confusing and so intimidating that they enlist
19 the help of salesmen of the product at the point of sale
20 to help them fill out the rebate forms. And this, in
21 itself, can create more problems should the salesman fail
22 to fill out the form properly himself. Because we've
23 heard, like I said, we've been hearing increasingly from
24 consumers who have tried to get someone where they bought
25 the cell phone or bought the computer to fill out the

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1 form for them because the consumer approaches sometimes a
2 rebate with the sense of impending disaster, and they try
3 to minimize the chance of that. But sometimes the
4 salesman makes the same mistake filling out the wrong
5 forms, switching a number, in this case the same result,
6 a denial is what happens to the consumers.

7 And if the rebate is so confusing that people
8 at the point of sale can't fill them out properly, here
9 we have a serious problem, and there's no reason that
10 these kinds of problems should be affecting people, if
11 people even selling the products are having difficulties
12 filling out the rebate form.

13 We heard a little earlier about how rebate
14 companies are replacing check rebates with prepaid gift
15 cards. It's certainly a trend that we're hearing about.
16 And some consumers have been frustrated by this, because
17 for example in California many people are aware or
18 they've heard that gift certificates can expire in
19 California. But they're not aware that bank-issued gift
20 cards can, they certainly can, they usually begin to
21 expire after six months, and that's the case with most of
22 these prepaid gift card rebates as well. So many
23 consumers are surprised to see their rebate dying a slow
24 death when they thought it was just a gift card, a credit
25 card, that would be just as useful and have the same

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1 longevity as a normal credit card or normal gift
2 certificate from a store. That's not the case. And it
3 takes some people by surprise.

4 I should add there's been something of a
5 backlash against rebates lately. Best Buy and Office Max
6 are examples of a couple of retailers who really have
7 washed their hands of rebates and have tried to get out
8 of the business, because they found that so many consumer
9 complaints were beginning to drag down the retailer's
10 reputation. Others like Staples have moved towards
11 processing rebates electronically, and removing some of
12 the possibilities for things to go wrong. And really all
13 rebates could be processed online. Although as I'll

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1 about these guys as well. They were offering substantial
2 rebates for purchasing a cell phone, often \$200 or \$300,
3 and the catch was the rebate form had to be submitted no
4 later than seven months, and that sounds pretty fair.
5 But the problem was it couldn't be submitted any sooner
6 than six months. So it was a maddeningly small window,
7 and it was one of those offers that not surprisingly led
8 to widespread denials. There's a saying in the tech
9 industry, it's called, 'Broken As Designed,' Broken As
10 Designed. And this is a good example of a rebate that
11 was broken as designed. People were not supposed to
12 complete this, and it was designed with the intent of
13 maximizing denials, rather than maximizing fulfillments.

14 We've been getting a lot of complaints about
15 some -- a problem with direct rebate processing company
16 called OnRebates. And it's interesting because this kind
17 of represents a strange convergence between mail-in
18 rebates and the new electronically-submitted rebates.
19 With some of the OnRebate submissions they really are
20 kind of like a Frankenstein-like hybrid of the worst
21 elements of a mail-in rebate and an electronic rebate.
22 The way it works with many of the rebates is the consumer
23 has to go online, fill out a complex registration form,
24 and then receive an email from the company acknowledging
25 that the registration's complete, email the company back,

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1 information without a lot in it for them. Sometimes that
2 personal information can be just as much value as the
3 rebate itself.

4 But we're encouraged by what the FTC is doing
5 to defend consumer rights. We're very encouraged by the
6 steps they've taken that were mentioned earlier this
7 morning. We're also encouraged by some state actions,
8 such as New York with AB8436 that requires strict
9 deadlines for sending rebate checks, requiring forms to
10 be more accessible to people who want to fill out rebate
11 forms, and that companies have to accept copies of
12 receipts rather than original receipts. These are fairly
13 common sense solutions that can help consumers avoid
14 these kinds of problems.

15 I should add that consumers themselves have
16 been taking matters into their own hands to some extent.
17 Consumer-generated websites like Fat Wallets, Slick
18 Deals, or Rebate Place, all have helped share in
19 disseminating information about how to contact rebate
20 fulfillment houses, tips on how to make sure your rebate
21 gets to the finish line, and which companies tend to
22 cause the most problems, so that some of these problems
23 can be avoided or at least identified.

24 So that's about all I have here. And I thank
25 you very much.

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1 [Applause.]

2 MS. O'BRIEN: Next will be Hal. So thank you.

3 MR. STINCHFIELD: Today I'll give you a brief
4 introduction of my background, so that you can see the
5 perspective from which I'm looking at this topic. We'll
6 talk about some of the most common misconceptions about
7 rebates; consumer and marketer challenges with rebates;
8 some of the fulfillment provider issues; what I think
9 needs to change in order to help improve this process;
10 and when a marketer knows that they're headed for
11 trouble.

12 I'll start by dispelling any rumors and suggest
13 that, yes, I have been in the business for 30 years.
14 And, frankly, the Federal Trade Commission was not
15 interested in all in rebates when I began, and there's a
16 very good reason for that. Rebates were a quarter, that
17 was a 25 cent piece. Our biggest issue in that day, by
18 the way, was when a quarter got sealed into a coin card,
19 inserted into a number 7 envelope, and labeled on the
20 outside of it, and somewhere in the mail stream someone
21 would take that envelope and slug it like that and make
22 the quarter come out the other end and that was a mail
23 theft, and that was about it. So there wasn't much fraud
24 back then.

25 I have managed over 50,000 rebates and consumer

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1 promotions for the Carlson Marketing Group; as an equity
2 partner for Young America; also for Boomerang Marketing,
3 which was an E continuity startup, which was the original
4 transmission of proofs of purchase over the web; and also
5 as the senior vice-president for Marketing Services. And
6 today my interest is on educating marketers on how to do
7 a better job with these offers so they can increase their
8 efficiency, effectiveness, customer satisfaction
9 (inaudible). Clients include Symantec Corporation,
10 United Health Care, Lorillard, PayPal, Pfizer, and a few
11 others.

12 There is one project that I'm working on right
13 now that's kind of interesting. I'm working for a prime
14 contractor to the federal government on a one billion

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1 specific, they're not marketer-specific, and they're not
2 retailer-specific. They're all program-specific, and
3 every program is different. And so they have to be
4 analyzed on a one-on-one basis. So all this hubbub about
5 the consumer complaints and what not are somewhat
6 generalized. And we can go through some examples there.

7 All problems and all issues are emanated from
8 offer structure, offer communication, and offer
9 execution. I'm sorry HP is in the room right now, but
10 this could have been anybody's, as could the next
11 subsequent six slides. So try to disregard the names
12 here. But when I first looked at this I saw that I could
13 buy a monitor for \$599, but after a \$350 rebate I could
14 actually get it for \$199. And the fact of the matter is
15 that that's not true. I have to buy the monitor, I have
16 to buy the tower, I have to buy a printer, I have to buy
17 Turbo Tax, and probably submit my first born in order to
18 get that down to \$149. Now this may not be considered
19 deceptive by the Federal Trade Commission, but I can
20 assure you that in many state jurisdictions it is in fact
21 illegal, just by the way it's positioned. And so we want
22 to watch out for offers like that.

23 This next one is extraordinarily challenging
24 for consumers in the software space, where a lot of the
25 software folks were saying, free, free, free, free, free,

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1 but if you read the fine print down below here you find
2 out that you not only have to purchase their product and
3 submit their proof of purchase, but you may have to
4 submit a competitive proof of purchase from a product
5 that you purchased over a year ago. I can't find
6 receipts of purchases I made last week, let alone a year
7 ago. So I say that that's a little difficult, especially
8 in a condition where it's in such fine print here that
9 you're telling the consumer here that they can get it for
10 free. Sure they can get it for free if they submit their
11 proof, the receipt, and the receipt from a previously
12 purchased product. So we kind of want to watch out for
13 offer structure and communication that looks like this.

14 Communication piece I'm generally referring to,
15 however, is the copy on the mail-in certificate, which is
16 where a great deal of the deception occurs, or perceived
17 deception occurs. I try to be balanced in this issue, so
18 I say "perceived" as well.

19 Here's another offer where I thought I could
20 get a Sonic Care probably for about \$15, because if I
21 submitted the middle panel I could get a \$10 rebate, and
22 if I submitted on the lefthand side I could get a \$5
23 coupon off, excuse me, \$10 coupon off -- I haven't

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1 that you can either have one or the other, either the
2 rebate or the coupon but not both. Now that's a little
3 problematic because this offer was delivered in a free-
4 standing insert would probably hit a circulation of 52
5 million pieces. So what I'm essentially doing is I'm
6 going to alienate about a half a million people who may
7 have been interested in this offer just by including some
8 small type thing here that says I can only have the
9 rebate or the coupon, but not both.

10 This next one, I don't remember the, I don't
11 remember the manufacturer here, but let me just indicate
12 one challenge here. Not only is this fairly busy both on
13 top as well as on that lower righthand panel, but here's
14 a problem for a manufacturer. This manufacturer is
15 simply asking for the consumer to fill in their name,
16 address, city, state, and zip code, and the UPC symbols
17 from the products they purchased, when in reality all
18 they have to do is go to the store, look for those
19 products, fill out the UPCs, and go get their \$35
20 virtually with no proof of purchase. So we try to act a
21 little bit balanced here to say it's not the fulfillment
22 provider, it's not the retailer, it's not the marketer.
23 Marketers have issues as well with the way they structure
24 their offers, sometimes to the point where that's going
25 to cost them a lot of money.

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1 out how to recommunicate them.

2 And we saw the printer offer, so I won't go
3 through that.

4 And the most challenging consumer offer these
5 days that I hear about is a rebate request invalidated
6 for a legitimately attempted purchase. They actually
7 went out and did this and for some stupid little minor
8 reason that really wouldn't affect the marketer's budget
9 they got disqualified.

10 We also hear, you know, if a manufacturer
11 offers a rebate, and I hear this from governmental
12 agencies and the press all the time, if a manufacturer
13 offers a rebate why do they make it so difficult to
14 comply with? So we're kind of shooting ourselves in the
15 foot when we make these offers but we don't do them in
16 such a way that's going to encourage compliance and high
17 customer satisfaction, and still be affordable and
18 efficient for the manufacturer. It absolutely has to
19 change.

20 Rejection letter copy; offer expiration dates
21 too short, not enough time, you see that, there's a lot
22 of legislation on that; unclear offer copy; and offer
23 limits enforced but not obviously communicated -- that's
24 the fine print on the bottom that says limit one per
25 household but nobody ever sees it so they submit in four

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1 times for it.

2 The marketer challenges I experience, and
3 things that my clients will come to me about will be, you
4 know, many rebates fail before they begin. They don't
5 have in-house expertise to design consumer-friendly
6 offers, or the created is relegated to an agency, or as
7 is most common, they operate in silos. You have
8 marketing, you have sales promotion, you have consumer
9 affairs, you have finance, and you have treasury, but
10 they never talk about what's going on. So the programs
11 really have to be evaluated both before they're delivered
12 and afterwards. And in many organizations it's so
13 political that the cross-referencing of those
14 communication pieces never takes place. And, again,
15 they're usually calling me when it's too late, after the
16 phones have been ringing off the hook or they're hearing
17 from some governmental agency.

18 Fulfillment providers are also a challenge. So
19 we can't throw all the mud at them. They rarely get to
20 review the offer copy in advance. Sometimes they don't
21 even know about an offer until they start receiving the
22 mail, and they go, what's this? And then they have to go
23 through their setup procedures. They usually aren't
24 considered at all during the development process, they're
25 sort of the last one on the end of the totem pole. And

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1 often reject thousands of consumer requests, perhaps as
2 the original specifications called for, but not
3 understanding that they're alienating half of the
4 marketer's constituency. The margins are thin so they
5 don't often have time to pick up the phone and call and
6 say, you know, we're getting too many complaints here.

7 And it's difficult for fulfillment providers to
8 understand how vocal consumers can be. So that needs to
9 change. I think they should at least be supplied with
10 the offer copy in advance of the offer so that they can
11 have a look at it, maybe give you guys some feedback
12 about what might work and what might not work. The
13 processing agreement must specify what threshold a
14 fulfillment house must notify a marketer, and that's as a
15 percent of invalids to valids, so that they're not
16 disqualifying the 50,000 out of a 100,000 that we talked
17 about before, Matt.

18 Marketers must be made aware the consumer
19 complaints might not only cause consumers to stop buying
20 their products, but it could also be unlawful behavior,
21 as is the case in Section 5.

22 I would also encourage marketers to use more
23 common sense. If it looks problematic, it probably is.

24 And the fulfillment industry must pay closer
25 attention to the problems inherent in the traditional

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1 mail-in process that caused all of this attention in the
2 first place. I mean it really is a joint effort between
3 marketers, advertising, fulfillment providers, to sort of
4 get together and say, geez, why would it take 18 weeks to
5 fulfill something? You know, is that intentional, is it
6 deceptive, are we telling the consumer? Is it full
7 disclosure? This is going to be an extraordinary issue
8 in the gift card space and the prepaid space, both
9 closed-loop and open-loop, when we get to the point where
10 we're talking about dormancy fees, we're talking about
11 maintenance fees, we're talking about split-tender where
12 they can't use the extra four bucks left on the card. I
13 mean this is extraordinary, I mean it's extraordinary.
14 Sure that's a valuable and efficient tool, but if you
15 don't disclose to the consumer what the condition is for
16 which they're getting this card, don't bother, stay away
17 from them.

18 Fulfillment also should be more innovative in
19 coming up with more consumer-friendly processes. That is
20 happening, for those of you who don't know, it is
21 literally possible to submit a rebate today, submit for a
22 rebate today, and get it back tomorrow. That technology
23 exists, and there are a few pioneers out there who are
24 doing it.

25 Marketers need to take a more proactive role in

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1 training their marketing and promotion personnel, and in
2 their sales promotion personnel. People don't do this on
3 purpose. We don't design offers that alienate the
4 consumers. I said once in Business Week that that would
5 be akin to brand suicide. We know that most of them are
6 not doing it on purpose. So let's change that, and train
7 the personnel who are handling these offers.

8 We also need to perform analyses that will lead
9 to measurable and actual improvements in their
10 promotions. So let's look at the data, analyze it, get
11 it objective in nature, and present it to whoever's
12 responsible for executing these offers. Usually senior
13 management has to get involved to break through some of
14 the political silos that exist in some marketers.

15 I contend that each successive offer has to
16 have a higher customer satisfaction rate than the
17 previous offer. And I think marketing departments need
18 to listen more closely to their internal and external
19 contact centers.

20 I'm doing what Tom did earlier, sorry, missing
21 my slides here. Okay.

22 When do marketers know they're in trouble? If
23 they hear from Matthew, that's a problem. If more than 3
24 percent of their consumers are on any given program are
25 invalidated. Tom cited 10, it really depends on both

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1 offer structure, size, how many proofs, and so on and so
2 forth. But a good benchmark, you want to look at about a
3 3 percent maximum. So if you're going over that -- I
4 evaluated about 25 for a pharmaceutical firm and 24 of
5 them were well beyond that, starting at 300 percent
6 greater than that and going up. So this happens all the
7 time, and it comes partly from the fact that a lot of the
8 sales promotion departments and marketers have
9 disappeared these days, so there's really kind of nobody
10 minding the store.

11 If you hear from a state senator or Better
12 Business Bureau, if more than 1 percent of your consumers
13 are contacting your contact center, internally or
14 externally, and oh by the way, those numbers are usually
15 not aggregated, so you have an internal call center, you
16 have a fulfillment call center, and you have an external
17 call center, each of them are getting 2 percent, 2
18 percent, nobody's saying that oh my God 7 percent of our
19 consumers are really angry with us and our offerings.
20 And those things have to be looked at.

21 If you haven't done training sessions for your
22 marketing and sales promotion and agency personnel, you
23 absolutely must begin to do so using real live data, and
24 kind of blurring those political lines internally, and
25 say, okay, this is for the good of the company. It

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1 doesn't matter who did it or whose fault it is, or why
2 this happened, we have to break through that clutter and
3 get it done and just plain educate.

4 And then if you don't have regular reviews with
5 your call center and fulfillment suppliers to find out
6 what's gone wrong, so that you can aggregate that data
7 and continue training and your continuous improvement.

8 And that's it.

9 [Applause.]

10 MS. O'BRIEN: Thanks, Hal. Next up is Dean
11 Graybill.

12 MR. GRAYBILL: Good morning. Use this one
13 here. I should start out with the standard disclaimer
14 that any statements I'm going to make are not necessarily
15 reflective of the Commission. I'm the only one required
16 to say that. But what I'd like to do is really
17 give you first a very general overview of what are the
18 laws that even apply here. You know, in some areas like
19 mail orders, we have a rule that's very specific about
20 things you got to do and the hoops you got to jump
21 through. Here that's not the case. So what you see is
22 us applying two very basic doctrines.

23 One is deceptive acts and practices. Frankly,
24 I view this as a common sense sort of thing. Now, it may
25 have very difficult applications, but the idea is are you

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1 making a representation, express or implied, that leaves
2 a net impression about the value of this rebate or the
3 ease of it, or the hoops you've got to jump through.

4 And then there's another lesser used doctrine
5 called unfair acts or practices, which is reserved more
6 for the situation where the harm isn't really stemming
7 from what people were told so much as the seller has done
8 something to structure the transaction that puts
9 consumers in a bind they can't get out of. A good
10 example of that is, you know, they tell you well you got
11 to send in the UPC code, but it turns out that a lot of
12 people don't get a box that has a UPC code on it. You
13 know, that's a structural problem with the offer.

14 Over the years we've brought a lot of cases
15 against a lot of types of firms. We don't discriminate,
16 we welcome all comers. Bumble Bee Tuna, actually that
17 was one of my favorites, where it was an offer you got 75
18 cents off on your next purchase. So you take the can
19 home and you got to peel the thing off, and then turn it
20 around to look what that offer is, the 75 cents off if
21 you buy 5 cans of tuna. So that was a very popular
22 promotion.

23 And it's funny, for whatever reasons you see a
24 lot of, a lot of things in the tech area. I don't know,
25 I'm sure there's reasons for that that are beyond me.

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1 any signal that there's any mention of important
2 conditions or considerations. But in 4 point type at the
3 very top there was a bunch of gobbledygook which, again,
4 you would need a microscope to discern. It goes gobble,
5 gobble, gobble, then it goes down and says, 'Requires
6 Compuserve activation.' Even then it's not telling you,
7 what, a month? A free activation? For a month? Or what
8 is it? That's the entirety of the disclosure in that ad.
9 So that was one problem.

10 In fact there were some very important
11 conditions having to do with this. One was that well you
12 had to spend the money, \$869 up front, and then send in
13 two different rebates to get your money back. That was
14 one thing. The more important thing was it required a
15 three-year subscription to Compuserve Internet Service at
16 the cost of \$21.95 a month. Now, or you could pay \$792
17 if you wanted to for that. And that wasn't all, you also
18 if you decided to cancel out of that Compuserve thing you
19 lost the rebate. And on top of that you had to pay
20 another \$50 cancellation fee. So again, it's not a
21 judgment about the wisdom of an offering like that, it's
22 the fact that nobody understood this. Nobody really was
23 made to understand that at the point of sale.

24 Now, I want to say one thing just in the
25 middle, and that is, you know, FTC has had a pretty

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1 vigorous enforcement program, but none of it indicates
2 any institutional opposition to the idea of rebates.
3 Frankly, we're just neutral. We're just neutral about
4 that like we are about everything in life. You know,
5 it's if people -- well, maybe that's not true.

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1 until you got to about the fourth disclosure page, the
2 fourth hyperlink, which, by the way, was a page that you
3 didn't have to go through before ordering, that you
4 finally got all the stuff.

5 So that already gave notice about the use of
6 hyperlinks as a -- and also the hyperlinks itself, and
7 here's the important point, there wasn't those warnings
8 and red flags around the hyperlink indicating read this,
9 this is important. And actually if you looked at the
10 order in Buy Dot Com, it didn't condemn the use of
11 hyperlinks but it said you better say something like,
12 'Owner's cancellation requirement, read here.' It wasn't
13 quite that draconian, but I mean it was something like
14 that, because people, you know, you don't always hit
15 hyperlinks, you don't always know how important it is.
16 You sort of assume they're going to tell me at some point
17 how important these caveats are.

18 Another reason InPhonic should have, and I'm
19 not trying to paint a picture of evil here, I'm just
20 saying this was not really cutting edge law in a way when
21 we came out with InPhonic, because we also in May of 2000
22 had come out with this thing, and again it's in the
23 business card thing you have where Eileen already quoted
24 from it. But there's actually two or three pages on
25 hyperlinks alone. And the sort of thing you should think

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1 about before using that as your exclusive route to tell
2 the truth. And you can also go to FTC.gov, which by the
3 way is a wealth of information on these subjects and you
4 print off a copy of this tonight if you want to.

5 Here I'll just quickly say, what did the
6 hyperlinks say? Well, it's like Eileen said, it just
7 basically said there's a rebate. I mean these two things
8 where it said \$90 customer mail-in rebate. If you
9 noticed there was a hyperlink you could get more
10 information, but it certainly didn't send up any red
11 flags that you better take a look at this in detail,
12 otherwise.

13 There were some other aspects to the InPhonic
14 case which also appear in other cases. And that is there
15 was also a matter of, I think I'll just flip through this
16 stuff, again, there was this aspect, as was mentioned
17 before, about InPhonic, where there's just this weird 180
18 day to 210 day window of time, no earlier, no later. You
19 had to have proof of continuous wireless service, you got
20 disqualified if you changed your phone number. And then
21 there was also a twist in that case where they actually
22 told people, hey you know what, if you don't quite get
23 this right the first time we're going to help you out.
24 They didn't, not many times, at least. So let's say you
25 happened to forget to put your email address on the

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1 thing, it would reject it. They had big red stamps going
2 reject. And telephone number, they would crater that
3 one, too, right there. Ineligible or incomplete forms,
4 did that.

5 Here was an example of that thing I was talking
6 about before, which is an unfairness, which is there was
7 also a problem of they had some things were somewhat
8 standard, you know, the UPC code and this, this, and
9 this. Also you were supposed to send in a guide to
10 wireless service. And, you know, not all customers would
11 get that stuff. So and then they would just
12 automatically, you know, reject it. And they are 50
13 percent. Now you've been hearing these figures about
14 well what's the trigger point where you should start
15 worrying, or at 10 percent has something gone wrong: 50
16 percent of InPhonic customers that had sent in a rebate
17 got rejected. When you got something like that something
18 ain't right.

19 Last subject, and I'll quick speed through
20 this, is just the idea of late fulfillment not going
21 well. And InPhonic had, you know, sometimes -- you've
22 heard much more wisdom on that than I can give you --
23 small companies can get in over their head, large
24 companies don't make it a priority, whatever. The Soyo
25 case was mentioned, where 95 percent of Soyo's rebates

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1 were late.

2 There was another case that was done by our San
3 Francisco office which I thought was, I didn't have
4 anything to do with, but it was I thought a great case,
5 or interesting case, in that it was Comp USA. And Comp
6 USA is a retailer, and they were advertising a
7 manufacturer-funded rebate. And they made a promise,
8 rebate checks will be mailed in six to eight weeks. And
9 what happened there is that to put it simply a great many
10 rebate checks were received as much as six months or more
11 past that deadline, and some just weren't gotten at all.
12 And frankly I think it was a case where the people
13 handling the rebates, the QPS, which was the
14 manufacturer, you know, they were in trouble, and they
15 were having trouble with all sorts of things in the
16 company, and they were going to go bankrupt ultimately.

17 But you can ask yourself, well wait a minute,
18 Comp USA is a retailer. Was it fair to hold them
19 responsible for the problems of the manufacturer? Let me
20 just say that in this case as in all cases, you know, we
21 really are reasonable people, we hear the best arguments
22 all sides can give, and frankly in this case the
23 Commission went out of its way in the complaint to signal
24 the reasons. And one, I forget the verbiage, what it
25 was. Comp USA had knowledge and continued to advertize

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1 the same promotion up until just before QPS went
2 bankrupt.

3 I would simply, I think that's pretty much it
4 for me. I would say that if you want more knowledge
5 about the cases we do, the FTC.gov website is a great
6 wealth. One little research tool I used is that in every
7 one of these cases, and I haven't mentioned two-thirds of
8 them, are accompanied by press release, and very often
9 electronically online on FTC.gov the press release of the
10 company as well by electronic copy of the actual
11 complaint and the order. Maybe not in some of the older
12 cases, but almost in the last five years I think all of
13 them. So you can go to FTC.gov, look for 'newsroom,'
14 which is where you get the press stuff, and it's
15 searchable by term, you can put in 'rebate,' or if you
16 know you want to see Comp USA type in 'Comp USA,' it will
17 bring up the press release, it will give you a chance to
18 actually print out as well the pleadings and it's
19 something where you can sort of fill in the details as to
20 how we view these things.

21 Thank you.

22 [Applause.]

23 MS. O'BRIEN: If you, can you hear me? We have
24 a couple of questions from the audience.

25 Start off with Joe, if you're ready. Do you

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1 have an interest in helping consumers, so if you hear
2 from consumers about maybe interest in your organization
3 actually help them individually?

4 MR. RIDOUT: At times we'll contact a retailer
5 or fulfillment house to try to mediate when the problems
6 have arisen. We can't do as much as the Federal Trade
7 Commission or say the state Attorney General can do,
8 because we don't have any jurisdiction like that. But we
9 can try to mediate in a reasonable way so that it
10 wouldn't get to the sort of the complaint where it would
11 have to be brought to the attention of those
12 organizations. But we do try to help, yeah.

13 MS. O'BRIEN: Great. And just so you know the
14 FTC we welcome complaints from consumers, that's how we
15 know the cases to bring.

16 I'm not sure who exactly this is directed to,
17 but I'll just ask the question so anyone can answer.
18 Copies of receipts present problems of consumer fraud, do
19 you think consumers should shoulder some of
20 responsibility?

21 MR. RIDOUT: Well, I don't think anyone would
22 disagree with that. That sounds like -- consumers
23 certainly have to shoulder some of the responsibility.
24 But there certainly are methods by which you could
25 securely determine if a copy of a receipt represented

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1 fraud, just an honest attempt to safeguard one's material
2 in the event of a rebate form getting lost. There's
3 certainly easier ways to do it, but consumers have to
4 bear responsibility, but making a copy of a receipt I
5 don't think presents an inordinate opportunity for fraud
6 with the other safeguards in place.

7 MS. O'BRIEN: What is the NTIA?

8 MR. STINCHFIELD: The National
9 Telecommunications and Information Administration
10 division of the Department of Commerce.

11 MS. O'BRIEN: And I think this is probably
12 directed at Hal. Have you seen that practices have
13 changed on a national level because of the recent
14 Connecticut law and Rhode Island law regarding rebates?

15 MR. STINCHFIELD: I think that because of all
16 media attention, marketers are getting smarter about
17 this, but it's kind of slow to come. The fulfillment
18 industry is also getting a little bit smarter with
19 electronic transmission of proofs of purchase and the
20 submission of electronic rewards back to the consumer by
21 ACH and other mechanisms that speed up the turn time.

22 I think with Senator Schumer, attention by the
23 Federal Trade Commission, Better Business Bureaus, other
24 Attorneys General, that in general the industry's getting
25 smarter, it just has to accelerate that speed of

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1 copy in order to drive them down.

2 MS. O'BRIEN: I'm not sure exactly what this
3 question is but I'll read it, because I've been having a
4 hard time understanding it. What is legally
5 objectionable about requiring that consumers comply with
6 all disclosed terms of a rebate offer? Mr. Ridout paints
7 a view of rebates that suggests that no reasonable person
8 would attempt to participate in a rebate offer, then once
9 consumers, I'm not sure, who to get to determine which
10 requirements they comply with. Does that make sense?

11 MR. RIDOUT: Not exactly. I didn't mean to
12 leave the impression that we felt that consumers should
13 not comply with rebates, or that a reasonable consumer
14 would steer clear of them. Merely we were highlighting
15 some of the problematic areas that have befallen consumers
16 who have complied with what they thought were the
17 reasonable terms presented, that turned out to not be
18 reasonable or turned out to be not complied with by
19 either the rebate fulfillment house or someone else down
20 the line.

21 But rebates in and of themselves we don't have
22 any objection to, per se, merely the way that some of
23 them have been unfairly presented and unfairly processed
24 at times.

25 MS. O'BRIEN: And as Dean was saying earlier, I

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1 mean we're not really -- the FTC hasn't made a value
2 judgment on the term so far, it's whether consumers are
3 actually understanding them when they buy the product.

4 MR. RIDOUT: If you look at some of the reforms
5 that some companies like Staples looked at the consumer
6 complaints associated with rebates being their number one
7 complaint they received from their clientele, then they
8 reformed their rebate procedures a great deal. And
9 that's really exemplary, as far as we're concerned, and,
10 you know, they've reduced the complaints they've received
11 enormously.

12 So rebates can work very well. But it's
13 interesting to look at those that don't and figure out
14 why.

15 MS. O'BRIEN: I don't know if any of you know
16 the answer to this question, but can a rebate, a company
17 that's offering a rebate actually refuse to mail to a PO
18 Box?

19 MR. STINCHFIELD: You know, that's a good
20 question. I think if it's clearly stated on the order
21 form they're within their rights to say so, but I would
22 pretty much caution against it, and work rather than on
23 an elimination routine that precludes or prevents or
24 makes it more difficult for a consumer to write different
25 PO Boxes down in order to defraud the company and get

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1 multiple requests. They have to be careful there.

2 On the NTIA initiative it so stated in the rule
3 making that PO Boxes are generally not allowed, that they
4 generally would not constitute a U.S. household.
5 However, there were exceptions, like territories in
6 Alaska and Indian Reservations and the like. I don't
7 think we have to go that far. A fulfillment provider
8 could suggest send back a letter asking for either a
9 rural route or a street address. I mean that's one
10 possible out.

11 MS. O'BRIEN: All right, thank you. I think
12 that's the end of our time for this panel.

13 [Applause.]

14 MS. O'BRIEN: We're going to take another short
15 break and reconvene at 11:45. And I encourage you again
16 to fill out your survey forms.

17 (BREAK)

18

19

20

21 **PANEL 3: THE FUTURE OF REBATES**

22 MR. GOLD: Our last panel of the morning is
23 called The Future of Rebates. We're going to be looking
24 at this topic from two different angles. First, we're
25 going to hear from Matthew Edwards, who is an assistant

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1 professor in the Department of Law in the Zicklin School
2 of Business at Baruch College in New York City.
3 Professor Edwards has written an article called, 'The
4 Law, Marketing, and Behavioral Economics of Consumer
5 Rebates' that will soon be published in the Stanford
6 Journal of Law, Business and Finance. And I would
7 certainly commend it to you once it's published.

8 One of the topics that he addresses in his
9 article is the recent state laws and the increasing
10 activity among state legislators in enacting and
11 proposing laws in the area of rebates. As we heard in
12 the last panel, there is no federal law that specifically
13 governs rebates. Some states, though, have legislated in
14 this area, and there's been quite a bit of legislative
15 activity on the state level just in the last year or two.
16 And Matt Edwards' presentation is going to focus on state
17 laws, both existing and pending, in the area of rebates.

18 Our second presentation is going to be by Chris
19 Quinlan, who is co-founder of PlusNet Marketing, which is
20 a promotion marketing company in Wilmington, Delaware.
21 PlusNet has developed an online rebate redemption model
22 that he'll describe, which is very easy to use and
23 attractive in a lot of ways from the consumer
24 perspective. Chris is going to be describing in his
25 presentation how his company's web-based rebate

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1 redemption model alleviates a lot of the issues about
2 which consumers have complained over the years regarding
3 rebates.

4 Now, that's not to say that the online
5 redemption model answers all of the problems from the
6 consumer's standpoint. And Eileen Harrington, who is our
7 Deputy Director in the Bureau of Consumer Protection of
8 the FTC in Washington, D.C. is going to be addressing
9 some of those issues, and reacting to the issues that she
10 hears in the first two panels.

11 One interesting facet of PlusNet Marketing's
12 online redemption model is providing consumers with a
13 variety of payment possibilities, alternative methods of
14 payment for their rebate. And these raise certain
15 disclosure issues, and Eileen, among other things, will
16 be discussing some of those disclosure issues raised by
17 those payment methods, such as gift cards.

18 So let's start out with Matt Edwards.

19 [Applause.]

20 MR. EDWARDS: It's an absolute delight to be
21 with you here today to talk about rebates. This is an
22 informal presentation on a paper that I'm working on. I
23 have a longer paper that is coming out very soon in the
24 Stanford Journal of Law, Business and Finance, as Matt
25 Gold pointed out. And you can tell I'm from academia,

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1 because if you want a copy of that paper once it's
2 published I'd love to send it to you, just give me a copy
3 of your email address and your address, and I'll send it
4 to you for free. It's just you tell me who you are and I
5 mail it to you for free, which is a little bit different
6 from some of you are used to dealing with.

7 When I was writing my first paper I found out
8 about a large consulting firm that had done a study on
9 rebates, and I thought it might be interesting to get
10 their information, so I contacted them and said, you
11 know, I'm writing this little academic paper, it would be
12 nice to just see your report, and they told me it's
13 \$15,000.

14 [Laughter.]

15 MR. EDWARDS: And I explained that I work for
16 the City University of New York, and I teach
17 underprivileged kids, and that sort of thing, and they
18 explained to me it's \$15,000. So we do things a little
19 bit differently. You give me your address and I actually
20 just send you stuff for free. Oh yes, and this is
21 informal, don't cite, quote or distribute, it's not ready
22 at that stage. In fact, after I finish I'm going to have
23 to ask you to forget that you've ever seen me.

24 [Laughter.]

25 MR. EDWARDS: Okay. We've heard about all the

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1 problems of rebates. Usually articles about rebates in

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1 to be the most egregious, the most egregious problems.

2 Rebate price advertising, New York, California,
3 Oklahoma, all require that if you advertise a rebate you
4 make it very clear that the rebate redemption is required
5 in order to obtain the advertised price. So this is a
6 price advertising statute that these three states have,
7 that basically says you have to clearly say this is
8 price, this is the rebate, so it's a price after rebate.
9 New Jersey assembly just passed a bill in January, 71 to
10 8, and it's pending now before the New Jersey senate.

11 A lot of this stuff is in flux, so it's
12 important in whatever state you're operating in, or if
13 you're operating nationally that you consult an attorney,
14 and not me, to make sure what you're doing is legal.

15 I'm not going to go through the California,
16 read the California code to you, but it's basically just
17 says that you have to be very clear, that you have to
18 clearly and conspicuously make it known that to obtain
19 the price advertised you have to mail in a rebate. So
20 that's the California law, and there's other states with
21 such laws.

22 Connecticut by regulation, and Rhode Island,
23 have even tougher rebate advertising laws. And
24 effectively -- and I want to thank Matt Gold for pointing
25 this out to me because I sort of misstated my initial

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1 draft in my paper, Connecticut and Rhode Island actually
2 make it an unfair or deceptive act just to advertise the
3 price with price after rebate. So effectively rebate
4 price advertising, price rebate final price, is unlawful
5 in Connecticut and Rhode Island. That is a very, very
6 strong approach, and it's an unusual approach in the law.
7 So you can't advertise in Connecticut, you know, rebate
8 price after rebate.

9 There was a proposal in Maryland just like
10 that, that was stalled, and there's some proposals right
11 now pending in Massachusetts for the same thing, where
12 you can't advertise the price after rebate. And the idea
13 is that it is inherently misleading to consumers because
14 they can't understand the whole thing of a price and then
15 a rebate, and then a price after rebate, this is
16 something that they somehow they grapple with and can't
17 really comprehend.

18 I'm going to quickly go through this. There's
19 some laws that have long been on the books. One in
20 California, it's called the subsequent event law, there's
21 a law that says that you can't offer -- you can't tell
22 somebody they'll receive a rebate if receiving a rebate
23 is contingent on a later event, meaning something else
24 has to happen to get the rebate. But the California
25 courts have held that this does not apply to traditional

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1 mail-in rebates, even though by the text of the law it
2 would seem that the fact there's a subsequent contingent
3 event, mailing in the rebate, that it would apply to
4 rebates. So just in the interest of comprehensiveness I
5 put this in, but it doesn't really apply to rebates.

6 Maine and New York now have laws that ensure
7 that rebate forms will be provided to consumers in an
8 timely manner. So these are things about consumers
9 showing up and saying I want to do the rebate but I show
10 up at the store and there's no forms, and it's difficult
11 to obtain forms. California had such a
12 provision in its vetoed bill. There's been proposals of
13 this kind in Arizona, Massachusetts and Texas. So these
14 are the types of things where people saying I want to
15 redeem but I can't get forms. So these are rules saying
16 that if you're going to say you're offering a rebate you
17 have to make sure that you have the forms available. A
18 pretty reasonable requirement.

19 New York's approach, which I won't go into
20 detail, obviously it's a lot of text on that slide, it
21 basically says that you have to have the forms there
22 where somebody makes the purchase, or you have to have
23 some sort of method for them to generate the form. And a
24 rebate offeror can comply with the statute simply by
25 providing sufficient forms based on reasonably

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1 anticipated sales. So you don't violate the law if in
2 New York if you provide sufficient rebate forms based on
3 what you anticipate, and it turns out that you run out,
4 that's okay, that's a safe harbor in the law. But if you
5 anticipate having 20,000 come in, 100,000 people come in,
6 and you put out 5 forms, that would be violating the law.
7 And there's provisions in the law for internet and
8 telephone sales. And these violations can give rise to
9 damages of \$100 to \$1,000 per violation, under the GBL.

10 There's been almost no litigation or no cases
11 under these provisions yet. They're very, very new.
12 And, in fact, for those of you who are really interested
13 there's another New York general business law, 391, with
14 exactly the same number that has to do with the sale of
15 used clothing. And somehow the New York legislature when
16 they passed this new statute didn't realize they were
17 giving two different laws the same number. Just
18 something for any lawyers in the room, something of
19 interest.

20 Rebate redemption time periods. New York now
21 requires that you give people at least 14 days to redeem
22 their rebates. California would have given consumers 30
23 days. Schumer, Senator Schumer recommended 30 days. And
24 there's a proposal pending right now in Massachusetts
25 that would give consumers a full year, and hearings are

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1 being held this month that would require a year. And
2 this is very interesting, it builds on Professor Silk's
3 fascinating presentation earlier which the general
4 feeling in legislatures is let's legislate longer
5 periods, but the behavioral economics evidence and the
6 marketing research indicates that longer deadlines might
7 not necessarily be beneficial. And I rely on Professor
8 Silk's research in this area in my paper, that longer
9 deadlines might not be beneficial. But that's what
10 consumers think they want, so that's what the legislators
11 are pushing for are long, long deadlines, even though
12 that might actually decrease redemption and increase
13 breakage.

14 There's also rebate payment periods. New
15 York's new law requires payment within 60 days. After
16 somebody satisfies the rebate requirements California
17 would have required 30 days. A proposal is now pending
18 in Florida, for those of you who want to lobby the
19 Florida senate, that would require payment in 15 working
20 days. And then there were a couple of other proposals.

21 So these are things saying you have to pay
22 people quickly, which, of course, the problem, as you
23 know better than I do, these short payment periods may
24 create complications between rebate offerors and
25 fulfillment centers, and it may not be possible to pay

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1 people that quickly. But legislators are getting into
2 the act, they want to mandate rapid payment of rebate
3 rewards.

4 Rhode Island requires rebate offerors to accept
5 copies of receipts now. So in Rhode Island you have to
6 take a copy of a receipt. New York, there's a proposal
7 pending that would require the provision of duplicate
8 receipts, and of course many firms are already doing that
9 on their own. There's many rebate offerors that provide
10 duplicate receipt for rebate redemption, Best Buy,
11 Circuit City, there's other firms that do this. And
12 California also had a similar thing saying that you
13 either have to accept duplicate receipts or accept
14 copies, you have to provide receipts or accept copies.
15 So this is the whole problem of people saying well I have
16 the receipt but I need to hang on to the receipt in case
17 I return the goods, or I need multiple receipts because
18 there's multiple rebate offers, and that's a frustration
19 some consumers have claimed, saying there's multiple
20 rebate offers but they need original receipts for each
21 one of the rebate offers. And so this would ameliorate
22 that complaint to some extent.

23 Now, a ban altogether. In my paper, which I
24 wrote a long time ago, I said this is not even an issue,
25 so therefore it's not even really worth discussing,

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1 nobody's interested in banning rebates. But there are
2 proposals pending now in New York and Massachusetts that
3 would require payment of rebates at the point of sale.
4 That is effectively a ban on rebates, if you require
5 payment at the point of sale. In the past in New York
6 this has not been successful. In New Hampshire it has
7 not been successful. I have no indication of whether it
8 will or will not be successful in Massachusetts, I doubt
9 it. But this is the type, that's probably the most
10 radical remedy, it would effectively be a ban on rebates
11 if they require payment at the point of sale.

12 But there are things pending now in New York
13 and Massachusetts requiring instant payment. And in many
14 of these proposals legislators simply cite the newspaper
15 articles that we've all read, and they cite those
16 newspaper articles as evidence, and those newspaper
17 articles as many in the room know are quite insipid and
18 quite lacking in any sort of sustained reasoned
19 discussion of the advantages and disadvantages of
20 consumer rebates.

21 There's other miscellaneous proposals that have
22 floated around in different states. Some proposals have
23 said you have to give people a way of checking on the
24 status of their rebates, some sort of mandatory method
25 for checking on the status of the rebate. The second one

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1 is some sort of clear marketing of rebate reward checks.
2 This is part of the whole junk mail thing that the checks
3 look like junk mail. I'm very, very sympathetic to the
4 complaints that consumers have about all of these things.
5 Some of the complaints seem to be a little odd to me, the
6 whole check is junk mail kind of you have the picture of
7 the consumer getting something in the mail and oh what's
8 this, you know, I think people can recognize a check in
9 the mail. But some people say it looks like junk mail,
10 so maybe there should be clearer markings on rebate
11 reward checks.

12 And then the last thing is something that
13 touches on what we talked about earlier, is requiring --
14 forbidding rebate offerors from requiring too much
15 personal information. They say, you know, they ask for
16 everything on these forms. I've filled out a lot of
17 rebates. I have not seen that they require an excessive
18 amount of personal information, but some states have said
19 that they want to limit the amount of information that
20 could be required.

21 So then the question becomes for people at the
22 FTC and at the state level, the bigger question stepping
23 back is is this a good thing where we have 50 different
24 states where different legal approaches might be tried on
25 regulating rebates. On the one hand it gives you a good

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1 chance to experiment with different approaches, which is
2 always a good thing in legal regulation. On the other
3 hand it could complicate things for national retailers
4 and rebate providers to have 50 different state laws to
5 follow. So the question is would a single federal
6 approach be better, some sort of best practices, would
7 that be better, a state model law. What would be the
8 best way for the whole industry? On the one hand you
9 wouldn't like a strict law, but maybe a strict law that's
10 the same everywhere would be easy to work with rather
11 than a mishmash of strict laws and relatively lenient
12 laws.

13 And building on Professor Silk's point, the
14 question about creating what legislators think are
15 consumer-friendly rules that actually have an adverse
16 impact on consumers, you know, requiring so much,
17 requiring levels of disclosure that might have an adverse
18 impact, requiring deadlines that would end up making
19 rebate offers not feasible. So the question is are we
20 really helping consumers with some of this legal
21 regulation, and what is the optimal level of regulation
22 to ferret out the most egregious rebate conduct without
23 deterring honest retailers and rebate offerors from
24 providing something to consumers.

25 And then the last thing is more of an FTC

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1 thing, and also with the states, what is the better way
2 to deal with this sort of thing, is it through litigation
3 under unfair and deceptive trade statutes, simply picking
4 out the worst players and having law suits against them.
5 Or would it be better to legislate across the board or
6 have a regulation across the board. And those are always
7 difficult questions to answer, whether it's better to
8 regulate via litigation or some sort of legislation
9 across the board.

10 As I said, I'd love to have further contact
11 with all of you. And if you want to get a copy of my
12 first paper just stop by, I'll give you my card. And I'm
13 going to write a follow-up piece, I'd love to send that
14 to you and get input as well, because it's very difficult
15 sometimes in the little office with no window to get an
16 idea of what's going on in the real world. So I just
17 sort of make stuff up.

18 [Laughter.]

19 MR. EDWARDS: And it's slightly better to
20 actually talk to people that work in the business than to
21 invent things, even though it might be less amusing
22 personally.

23 Thank you.

24 [Applause.]

25 MR. GOLD: Next up we're going to have Chris

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1 Quinlan.

2 MR. QUINLAN: After Matt's presentation I'm
3 kind of hoping I have a job next year with everything
4 that's going on.

5 I'm going to talk to you a little bit about the
6 process that we go through at PlusNet. First I'm going
7 to give you a little background on the company, and then
8 actually run you through a demonstration.

9 Basically what we've tried to do is transform
10 the rebate industry from our side and the consumer
11 behavior side, from a breakage model to a redemption
12 model. And breakage for us is the uncashed funds, or
13 unused funds on cards.

14 A little bit about the company, we were the
15 first to launch in '99 an online rebate process at Rite
16 Aid Corporation, we were the first to offer a completely
17 online solution to redeem end value and actually validate
18 and fulfill the rebates electronically. And our
19 technology is free to the consumer.

20 This sort of, you know, the old way versus the
21 new way, if you will. In fact, I have a couple things
22 here. Traditionally you have to cut out UPCs, mail in
23 all kinds of information. We've kind of taken that down
24 to one process where you can actually use this receipt to
25 actually go online. You can mail in the receipt at the

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1 yet, but we're working on it.

2 This is what I'm going to walk you through, in
3 terms of what the customer sees. One key point is that
4 actually we can actually project redemption rates as well
5 as sales rates, because of the historical POS data that
6 we get from the retailers. And it can be done by
7 category and/or brand.

8 So in this case the consumer makes a purchase
at Comp USA, either online or in the store, they're told

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1 rebates paid, it shows the rebates not approved. Also
2 with this slide if there was a multiple purchase piece,
3 buy the printer, buy the laptop, buy the monitor, if you
4 bought two of the three but didn't buy the third it would
5 tell you right there what you needed to do to make that
6 additional purchase.

7 This is sort of where we're headed after the
8 assumption that the consumer actually makes their
9 purchase online, or redeems the rebate online, or mails
10 it in, and they've got a valid rebate.

11 Let me get to my page. And this is where we
12 think the sort of the next generation of what we're doing
13 is headed. It's a rebate option acceptance maximization.
14 The platform provides the options for the consumer when
15 they're actually validated for their rebate to get
16 multiple payment options. So in this case what we do, we
17 take the vendor product information, the rebate amount,
18 the demographics that were collected earlier, the
19 transaction profile of the consumer based on previous
20 transactions, we put it through the system, and then
21 understand that these offers on the righthand side are
22 the most likely to appeal to that consumer. Okay.

23 So if a 37 year old male goes in to purchase a
24 Epson printer we'll change on the fly here to HP. So
25 what happens is we know what they purchased, they've got

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1 behavior.

2 And at this point in time the consumer actually
3 chooses a card, and if they use the card in a certain
4 period of time at Comp USA or at Comp USA dot com they
5 get a 10 percent discount off their order.

6 Again, everything that we're doing today is
7 either under patent protection already or actually in the
8 process of being patented. In our situation we believe
9 that everybody wins, because the consumer wins. There's
10 a complete transparent process for the consumer to see
11 all through the steps as to where they are with their
12 rebate. The retailer wins because they don't have any of
13 the backlash or brand suicide, as Hal mentions. And then
14 the manufacturer wins obviously because of all those
15 reasons. And we have a happy customer that actually buys
16 more product from that brand and from that retailer.

17 That's pretty much it.

18 [Applause.]

19 MS. HARRINGTON: I'm going to stay seated right
20 here, because I need to read my notes. I've been taking
21 furious notes as our first two panelists presented, to
22 provide hopefully some useful further questions,
23 reactions, responses, so that you can watch at least in
24 real time how one person who works at the FTC might think
25 about some of these developments as they are playing out.

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1 First, let me turn to Matt's wonderful
2 presentation about developments in state law and respond
3 with some thoughts about those. My first thought was
4 that one of the things that makes as I listen to Matt
5 talking about enactment of specific state laws and
6 consideration of other legislative and regulatory
7 provisions at the state level, my first thought was that
8 one of the things that makes the Federal Trade Commission
9 perhaps a somewhat different governmental entity is our
10 very heavy reliance on economic analysis and our valuing
11 of that as we go about thinking about what the most
12 sensible approach is to government intervention in the
13 marketplace.

14 We, sometimes to the consternation of our
15 critics, take quite a while in our formulation of
16 marketplace issues and our response to those. And one of

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1 valuable prospect that you're trying to protect in the
2 first place, which is the prospect of good value for
3 consumers.

4 And so as I listen to the description of
5 various state efforts to regulate in this area, my
6 question is what do the economics tell us about that
7 particular approach.

8 So let's look first at the category of price
9 advertising. We heard that there have been enacted laws
10 that say that you cannot advertise at all the price after
11 rebate. And I'm wondering, and maybe somebody here knows
12 the answer to this, Joe, are you here still? No, Joe
13 Mulholland?

14 MS. ABRAHAMSON: I know the answer to the
15 question.

16 MS. HARRINGTON: Well, let me -- is Joe
17 Mulholland here? Rats. I'm wondering what we know about
18 what's happening in Connecticut, where the law apparently
19 prohibits advertisements of price after rebate. What is
20 the answer to my question?

21 MS. ABRAHAMSON: Actually, there's a slight
22 misstatement of the law. What the law says is that --

23 MS. HARRINGTON: Okay. Can everybody hear?

24 SPEAKER: No, you need a microphone.

25 MS. ABRAHAMSON: No one has ever said that to

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1 And the question, the way that we would look at
2 this always is under the Section 5 standard that Dean so
3 well explained, and that is whether there is material
4 information that is misrepresented or that is not
5 adequately disclosed in a way that in light of the
6 overall impression left by the ad causes consumers to be
7 misled.

8 And I'll put in another plug just using that
9 example for what we think is the value of the elastic
10 principle that is set forth in Section 5 of the FTC Act.
11 So rather than prohibiting a particular kind of claim, we
12 would look at the claim or the information that's
13 provided in light of the entirety of the ad and ask what
14 a reasonable consumer would understand the claim or the
15 advertisement to mean. So that would be a concern I
16 think that we would have, and a reason why generally
17 speaking in the area of price advertising you don't see a
18 lot of activity from the Federal Trade Commission.

19 Now, you might say well but you do have these
20 guides on price advertising, and what I would say is yes
21 we do, and those guides were promulgated a long time ago.
22 And if you go to our website and look at our enforcement
23 agenda and study our casework you won't find press
24 releases announcing FTC enforcement actions based on our
25 deceptive pricing guides, or any of the other pricing

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1 guides. Which isn't to say that we never would do such a
2 thing, but we have a concern, a real concern about
3 unintended consequences that can flow from this kind of
4 regulation. And we've learned, I think everyone has, and
5 as the school of law and economics has grown up over the
6 years I think everyone has learned. And so hopefully we
7 benefit from that.

8 I was interested in the laws that require
9 rebate form availability and provide the safe harbor for
10 reasonable expectation of response. That reminded me,
11 you know, of the whole issue about rain checks a number
12 of years ago. Same kind of issue. There were efforts
13 made to require that retailers either have insufficient
14 supply to meet 100 percent of the demand that item that
15 was advertised, or that if rain checks were offered that
16 there be some reasonable expectation, that there be some
17 requirement that they have at least enough of the item on
18 hand to meet reasonable expectation. There were efforts
19 made, and maybe there are laws on the books in states,
20 that essentially would prohibit the use of offer of rain
21 checks, and say instead you have to have enough product
22 on hand to meet 100 percent of the demand. Well, the
23 unintended bad consequence there was that consumers then
24 never had the opportunity to buy the item on sale,
25 because no retailer wanted to run the risk of not having

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1 think we would likely say, at least I would likely say,
2 and I finally probably should issue the disclaimer that
3 these comments reflect my views and not Dean Graybill's

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1 Chris, what an interesting model. It was
2 innovative and interesting. And one of the questions
3 that I had, and you people from the industry in the room
4 can tell me this, is the word breakage a relatively
5 recently developed term or has that always been around?

6 MR. STINCHFIELD: It's always been around. The
7 confusion becomes the difference is between the --

8 MS. HARRINGTON: Hold on, Hal, we're going to
9 get a microphone. Hal answering the question is the word
10 "breakage" new, or is it being used more often than
11 previously.

12 MR. STINCHFIELD: Hi, this is Hal Stinchfield.

13 MS. HARRINGTON: Or why am I hearing it all the
14 time this year, and I never really heard much about
15 breakage before?

16 MR. STINCHFIELD: That's a good question. It
17 refers to the financial model dealing with the subject of
18 mail-in rebates. And there are two terms here. One is
19 breakage, which is the enticement of a product sold as a
20 result of the enticement of a rebate offer but not
actually redeemed. So thatrenli26.000 0.0ET1.00000 0.00000 0.00000

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1 after rebates as a form of (inaudible), and I think that
2 has raised the visibility, as has the value of rebates
3 over the past several years going from a hundred million
4 dollars to six billion dollars.

5 MS. HARRINGTON: Thank you. Slippage,
6 breakage, you know, disease-age, it sounds like we could
7 be at a personal injury law conference.

8 One thing that I was interested in was Chris's
9 comment that the online program he was describing has the
10 potential to shift rebates from a breakage model to a
11 redemption model. And I was just -- I thought back to
12 Professor Silk's presentation about the finding that
13 those who don't redeem are more likely to avoid the next
14 offer, if I think I've characterized that -- and just,
15 you know, how then if that's the case making that shift
16 from breakage to redemption might be a smart thing from
17 the manufacturer's point of view, would stands to reason,
18 and would help to avoid what I guess Hal referred to as
19 brand suicide, perhaps.

20 Then as I watched the presentation on how the
21 online redemption works or might work, one thought that I
22 had is that as whether for an online redemption or any
23 other purpose a lot of information is gathered from the
24 consumer who is going to make the redemption request,
25 would there be instances where it would appropriate to

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1 actually look forward over lunch to talking to some of my
2 colleagues about what they think about that. I asked the
3 question without offering a conclusion.

4 MR. QUINLAN: By the way, it does say that.

5 MS. HARRINGTON: It does?

6 MR. QUINLAN: Yes. It actually says, "no
7 thanks, I prefer another payment option" if they click,
8 "no."

9 MS. HARRINGTON: Okay. Well, good
10 qualification, is that enough? Then that's my question,
11 is that enough? Did I get it, would I get it, should I
12 get it? I don't know.

13BT198.0000 495.9600 (MS. HARRINGTON: Okay, well, good) PJE has 00000 0.000

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1 listening to these presentations about how we might view
2 them.

3 [Applause.]

4 MR. GOLD: Thanks everybody for those
5 presentations. I've gotten a number of questions from
6 the audience, and we've got time for at least a couple of
7 them.

8 First, following up, Eileen, with what you were
9 discussing about the additional offers that are provided
10 to consumers in PlusNet's model. One member of the
11 audience wonders since the consumer signed up for a
12 rebate and goes on to redeem the rebate, and Comp USA or
13 PlusNet gives them the -- it says, 'requires consumers to
14 submit to a sales pitch and see other promotions in order
15 to get a rebate,' should this be disclosed somehow ahead
16 of time. And the second question is, is this an unfair
17 practice?

18 MS. HARRINGTON: Well, the nature of this whole
19 site is marketing. I'm not sure that some disclosure
20 that somebody is going to make offers on this site is
21 material information, the disclosure of which is needed
22 to prevent some kind of consumer injury or harm, or the
23 likelihood of harm. So my initial response to that is
24 no, no, and no.

25 MR. QUINLAN: The other thing is the consumer

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1 always has the option --

2 MS. HARRINGTON: Does anyone else think
3 otherwise from the FTC? We could have a little debate
4 right here.

5 MR. QUINLAN: The other thing is the consumer
6 always has the option in the end and be to get the check.
7 So if they go through the process and don't decide to
8 purchase anything and/or don't decide to even a gift card
9 they can get paper checks.

10 MR. GOLD: Okay. Another member of the
11 audience, this one's directed to Matt Edwards. Talking
12 about the Connecticut and Rhode Island laws, which
13 prohibit essentially doing the math at a retail
14 establishment. Is a website, do you know whether a
15 website with an order page is considered a retail
16 establishment under those laws?

17 MR. EDWARDS: No, I don't know.

18 MR. GOLD: And this one for Chris Quinlan. Do
19 you, I think you mentioned during your presentation that
20 even though you've got the online option, something like
21 28 percent of consumers still send in prefer to do it by
22 mail, do you have any idea why 28 percent of consumers
23 still want to do it the old-fashioned way rather than
24 doing it online? And also is this number consistent or
25 has it been changing?

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1 MR. QUINLAN: Well, the first part is it's
2 definitely been changing, it's been going down. So the
3 online submissions have been rising. As I said, the
4 updated numbers throughout April 15th across three
5 different classes of trade, which is drug, grocery,
6 consumer electronics, is 75-25. One of the things that
7 we learned, and it's a while back, but with price line
8 there's a lot of backlash because people couldn't
9 actually go to a computer, and if they didn't have a
10 computer they couldn't bid on milk. So I'm assuming that
11 those same people don't want to go online and submit
12 their rebates, they want to just mail it in the old-
13 fashioned way. The only difference is it's a much more
14 simplified process, because all they really have to do,
15 and in some cases with their loyalty card number attached
16 we don't even need their name and address, we get that
17 file from the retailer with the transaction.

18 So all they actually have to do is drop the
19 receipt into the mail and we process it for them. All
20 we're doing is taking the receipt information on a mail-
21 in and punching it into the system, data entering it.

22 MR. GOLD: Okay. And the question that I have
23 for you, Chris, is I think part of your model or one of
24 the attractive things parts of your model for consumers
25 is the high percentage of consumers presumably who will

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1 attempt to redeem, and the relatively low redemption
2 rate -- low -- relatively high redemption rate and the
3 relatively low denial rate. Have you gotten any push-
4 back [sic] from clients or potential clients who were
5 concerned about these things?

6 MR. QUINLAN: No, the redemption rates haven't
7 changed materially. And I think, I forget who was
8 talking, I think it might have been Tim Silk, the whole
9 idea is it's the rebate ratio that drives the redemption.
10 It's the percentage of the cash that they're going to get
11 back whether they're going to mail it in or do it online
12 really hasn't materially changed the rate, if you will.

13 So we have -- the other side of that coin is we
14 can project, if a vendor has a budget and they were doing
15 \$50 rebates but didn't have any visibility into that, we
16 can actually give them visibility to actually show them
17 what their potential redemption rate's going to be based
18 on their historical PLS data. So we can actually help
19 them manage that cash flow. So if redemption did go up,
20 is my point, we could ratchet back the potential rebate,
21 and they'd understand it could still stay within that
22 budget.

23 MR. GOLD: How about the other half, the low
24 rate of, relatively low rate of rebate redemption
25 denials?

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1 MR. QUINLAN: Well, again, we got into the
2 business based probably on the consumer side of things,
3 more so. And our whole idea was to make it easier for
4 the consumer, so we don't have a rejection rate that's
5 very high because it's sort of infallible information
6 that's being passed back and forth between us in the
7 retail end or vendor.

8 MR. GOLD: Okay. I'd like to thank our panel
9 again. I think that's all we have time for.

10 [Applause.]

11 MR. GOLD: As we speak, a phone call is coming
12 into the cell phone that it's vibrating, and there are a
13 couple of calls that whoever's missed. Did anybody
14 misplace a Samsung telephone? I will continue to hold
15 onto it.

16 We're going to reconvene at 2:00 o'clock. You
17 can leave your folders here.

18 [LUNCH]

19

20

21 **PANEL 4: INDUSTRY SOLUTIONS: EXPLORING BEST**
22 **PRACTICES IN REBATE PROMOTIONS**

23 MS. BADGER: My name's Linda Badger, and I'm a
24 staff attorney at the western region of the Federal Trade
25 Commission. And now that you're all full from lunch, I

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1 was going to say now that you're all full from lunch we
2 can start with the meat and potatoes panel, which is
3 hearing practical solutions to the rebate problems we've
4 all been talking about this morning and this afternoon.

5 First, we're going to hear best practices from
6 a manufacturer's point of view. Manufacturers are
7 ultimately responsible for every aspect of rebate
8 promotions, from designing and advertising them to
9 funding them and to having them fulfilled. And to give
10 us this front-line perspective we're very pleased to
11 welcome Mr. Christopher Ekren, who is the Senior Vice-
12 President and Deputy General Counsel of Sony Electronics.

13

14 So take it away, Chris.

15 [Applause.]

16 MR. EKREN: So thank you, Linda and Matt, and
17 also everyone here. Sony views this area of great
18 importance, and we really appreciate the chance to
19 participate in this activity.

20 So obviously I'm with the law department at
21 Sony. But the rebate responsibility is a corporate
22 responsibility, it's not something that the law
23 department owns or runs. But it's something that we're
24 very intimately involved with, as a corporate culture
25 we're part of a team. As an in-house lawyer I am part of

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1 metrics and reporting.

2 The vendor selection is the most important
3 aspect of this, because you really do have to put your
4 company's reputation and your reputation with your
5 consumers in the hands of a third party.

6 And we're a large company. So some of the
7 things we're going to talk about here are perhaps not
8 relevant to every organization. But from our perspective
9 we felt, because we have many divisions that, for
10 example, a camera division, or a PC division, etcetera,

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1 30 marketing groups, everybody tried to have their own
2 coupon to fill slightly different parameters, different
3 ideas of sort of what the marketing edict was going to
4 be, what you are trying to drive there. And from an
5 efficiency standpoint we found that once you learn
6 certain lessons you should probably just continue to
7 leverage those and not recreate the wheel.

8 But we also took into account what our vendor,
9 I mean our resellers were telling us about what's easy
10 for them to explain and administer, and what consumers
11 can understand. And I think one of the lessons, and we
12 constantly battle this, it's never one battle, is try to
13 keep things very simple. Because while I think a lawyer
14 can understand a certain level of language and perhaps
15 I'd like to think most of our employees are sort of in
16 the marketing area have college degrees and have a
17 certain level of expertise in language, that isn't
18 necessarily the demographic that's going to be
19 interacting with the form.

20 One of the things we did as an online pre-
21 qualification, and I know a number of vendors support
22 this, it almost seems a little bit counter-intuitive to
23 require or suggest, and it's actually a suggestion, not a
24 requirement, somebody to go online and fill out or answer
25 the questions they'd be answering anyways if they were to

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1 fill out the coupon and mail it in, and then determine
2 whether in fact they are qualified for the rebate.
3 Because if someone can fill out a coupon properly why
4 would they have to go through an online process. So it's
5 an optional thing, but what we often find is people don't
6 read carefully the instructions. Sort of going through
7 this process as part of the submission process actually
8 helps them determine something that perhaps they can cure
9 a better document so that they don't get rejected and
10 they can get their money, or whatever they're looking
11 for, as quickly as possible.

12 So I would recommend that. It's something that
13 the team told me really is kind of a tweak to the process
14 that may seem a little bit counter-intuitive, but really
15 does seem to help. From a retailer's standpoint, and I
16 think there's been a lot of progress in this area, a lot
17 of legacy systems perhaps don't support every capability
18 that you'd want to have to completely consistently
19 represent rebate terms. So there's always an issue, well
20 you only have 50 words, what can you fit in here, because
21 we can only put so much on this little rebate slip. And
22 that's how our company's going to do rebates, it's our
23 way, or we're not going to do rebates with you, Sony.

24 I think that what it requires is teamwork and
25 partnerships so that when the retailers are doing their

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1 implementation and you do negotiate with them about what
2 really the consumer has to see, and make sure that that
3 does get supported through their IT people and their
4 system people.

5 From an inventory standpoint, when you're
6 having a product that people are seeking to receive, you
7 obviously need to have the products available. And that
8 may seem extremely simple, and why can't that happen, but
in a place like Sony that has a very complicated supply

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1 Balancing that need with the need to be responsive to the
2 deadlines that we've committed to is something that we
3 spend a lot of time thinking about and put in the process
4 for.

5 But anything that is customer related does take
6 a priority from a vendor standpoint, and it's a slightly,
7 it's a different process because vendors are commercial
8 companies and we have a contractual relationship with
9 them where we can build in exactly what the payment
10 expectations might be.

11 So I talked about reporting at the very
12 beginning, in terms of how our CEO does get a roll-up
13 report that talks about how we are performing to our
promises, and also internally, yo7get thadh jmerT1.agb,ks ab16000 3

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1 I'll show that a little bit later.

2 I do want to also add here there have been
3 discussions throughout the morning regarding valids and
4 invalids, and the rates, and those types of things. And
5 while we're not yet to the 3 percent industry-wide that
6 Hal mentioned, we're getting closer. And it's really the
7 culmination of a couple of things, one has been the
8 promotional design. And that's been talked about
9 throughout the morning, how critical that is to really
10 drive the percentage of invalid claims down lower and
11 lower, because the promotion rules become much clearer,
12 and it becomes much easier for the consumer.

13 We have also, through the technology, used a
14 rules-based transaction processing engine that we
15 developed, again, for accuracy. So the point is to
16 really focus in on accurately processing the rebates, and
if they are valid, pay them, pay them quickl0000wgm quickceetting cl

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1 the purchase date was outside of the promotional rules.
2 You find those are the top four reasons for invalids. In
3 a lot of cases the consumer, for instance, it was a
4 missing store receipt, has the opportunity then to send
5 that store receipt in and for that claim to be converted
6 from an invalid status to a valid status and get the
7 check out.

8 So there's a lot of best practices from a
9 processing perspective. I'm just going to focus in on
10 four today in recognition of the time here. Those four

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1 data that they've got. And in many cases, and I'm going
2 to show you an example of the Staples situation, if that
3 online process has happened within say a couple of hours
4 after the actual purchase we already have access to the
5 transaction data to be able to indicate to the consumer
6 right there on the spot whether their claim appears to be
7 valid or invalid, based on a combination of the
8 transaction number as well as the products that were
9 purchased in that transaction.

10 Once we've received the point of sale data and
11 therefore have the transactional data, which is the proof
12 of purchase for the rebate, then we can move it very
13 quickly through the process. One of the things that we
14 have to be very careful about is fraud. And one of the
15 aspects that we look at specifically for paperless is
16 returns. And so in many cases the submission will be in
17 essentially a hold period for the term of the return
18 window. Therefore, if the consumer were to take the
19 product back they would get their full refund of the
20 purchase price, we would be able to validate that against
21 the transaction data and it wouldn't get the rebate.

22 And of course the flip side is true as well.
23 If they have not returned within that window, then the
24 rebate check is sent out immediately. We obviously try
25 to keep this a very tight window.

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1 accurate.

2 And finally, brand extension. From that I mean
3 that it really, because it's a good consumer experience,
4 elevates the client's brand in the eyes of the consumer.
5 And actually what we're finding is that this is driving
6 loyalty, loyalty of that consumer, frequency and recency
7 of purchases. And, in fact, one of our best clients, Ace
8 Hardware, recently launched Ace Rewards, which is their
9 loyalty program, and they have integrated paperless
10 rebates into that solution so that their loyal members
11 are receiving all of the benefits of paperless rebates.

12 The experience, you saw it this morning, this
13 is very similar in the case of Staples easy rebates. And
14 there was a comment made earlier about how Staples has
15 done a good job of working through some of the consumer
16 experiences, and we've worked with them since 1999 in
17 partnership to really move that along quite quickly.
18 Staples easy rebates, which most people do know, is
19 really the culmination of those efforts, and is a
20 solution that works very, very easily. There is very
21 little information for the consumer to have to enter in.
22 And the key here is Staples makes sure it is very, very
23 clear on the rebate form the two pieces of information
24 that are required in order to claim that rebate: that
25 being the transaction number and the promotion code, both

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1 of which are printed on the receipt.

2 Moving to turn times. The faster that we can
3 pay the consumer the better the experience, no question
4 there. We have been working diligently with our clients
5 to bring that down, and we are now seeing in some cases
6 turn times from the postmark date to the date they have
7 the check in their hands as little as 21 days. So we've
8 made substantial improvement there. There are many
9 clients that are not there yet, that we continue to work
10 on, and some that simply won't be able to get all the way
11 down to 21 days, but that we can continue to make faster.

12 We have in the process removed several steps.
13 You see in the middle, Linda commented on we're doing the
14 nitty gritty, and in the middle you see some of that
15 nitty gritty detailed. And we have removed several steps
16 from 1999 till today, and automated those into the
17 technology in order to compress that time frame.

18 To give you an idea, in 1999 it was estimated
19 that the turn time as described, as I explained, was 12
20 to 16 weeks. In 2007 we now are best practices getting
21 down under 4 weeks, which could represent up to 75
22 percent decrease in that turn time. We actually find
23 with our clients right now across the board that north of
24 90 percent of valid claims the check is actually out the
25 door and in their hands in less than 6 weeks. So we're

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1 continually working to improve that, but it's coming down
2 substantially.

3 The third area is submission scanning. And
4 this is something that we've put in place here over the
5 last couple of years. And rather than simply keying in
6 the contents of the envelope and then bagging up the
7 paper, if you will, and storing it out into a warehouse,
8 we moved to scanning. This has allowed us to really
9 literally take the entire contents of the envelope, as
10 well as the outside of the envelope itself, create a
11 digital image of all of that information, and key in off
12 of the digital image. This actually has resulted in
13 several benefits. The integration with data entry
14 actually has yielded efficiencies, we're actually able to
15 key the information in much faster, as well as improved
16 accuracy. Rather than the data entry clerk looking down,
17 they're literally they have the scanned image and the
18 data entry screen side by side. And as a result we've
19 actually seen a nice increase in data entry accuracy.

20 The other area of benefit is in the call
21 center. The images are available to the customer
22 services representatives within that transaction. So
23 when a consumer calls the customer service representative
24 can pull that up on their screen and they're looking at
25 exactly what the consumer sent in. So while I'm not

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1 going to talk about consumer best practices, certainly a
2 consumer best practice that has been talked about a lot
3 is photocopy everything that you mail in. The beauty of
4 that is the consumer's now looking at the photocopy, the
5 customer service representative is looking at exactly
6 what was sent in, and we can resolve the issue, whether
7 it's that the consumer did not send something in and we
8 can discuss what they need to send in, or whether we, in
9 the case Sony just described, you know, perhaps the error
10 was not significant enough and we've been informed by our
11 client to pay the rebate claim.

12 Third, we've talked a lot about this today,
13 promotion design. And we've seen lots of examples, and
14 certainly this is a horrible one, and blends in all of
the instructions to the consumer as well as the terms(4)TjET1.00000

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1 claim online. You know, we still have to get the terms
2 and conditions in there, but if you were to read these,
3 and you'll have an opportunity to when the presentation
4 is made available, it's quite simple, it's quite
5 straightforward, there's not a lot of difficult language
6 in there. So that certainly has helped tremendously,
7 versus burying it deep inside some terms and conditions.

8 So those are the four areas I wanted to talk
9 about today. I, too, look forward to the question and
10 answer session. We are making strides. We've made a lot
11 of strides over the last eight years as an industry.
12 There are still things obviously we can do to make this
13 better. But just the fact that we're talking about it
14 now is great. And the application of technology through
15 a partnership between the clients and the processors is
16 really going to help us get there. So thank you very
17 much.

18 [Applause.]

19 MS. BADGER: Thanks, Mike. And that reminds me
20 of our admonition that mouse print is for rats, so avoid
21 it.

22 [Laughter.]

23 MS. BADGER: Our third panelist represents the
24 retailer's point of view, and often retailers catch the
25 heat for botched rebate programs even though they're just

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1 selling through products that carry a manufacturer's
2 rebate. Customer complaints are bad for business, and
3 costly as well.

4 Costco has a really intriguing before and after
5 saga of how it tamed the rebate beast. And here to tell
6 you the story is Joe Grachek, Vice-President and
7 Merchandise Accounting Controller for Costco Wholesale
8 Corporation.

9 Thanks, Joe.

10 [Applause.]

11 MR. GRACHEK: All right. Good afternoon,
12 everyone. I wanted to give you a little bit of a story
13 about Costco's journey through the mail-in rebate world
14 and how we've went down one pathway and ultimately by
15 doing what we thought was the best for members, best for
16 shareholders and our employees, and our suppliers, came
17 to some conclusions that we probably didn't think we were
18 going to come to.

19 So Costco's all about maximizing the value to
20 our members, our customers, and minimizing the cost of
21 the expense or the administration of doing business for
22 ourselves and for our suppliers. So that's the
23 fundamental principle that we begin this process with.

24 A few years ago Costco developed software and
25 systems with our fulfillment partner to be able to use a

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1 point of sale as the beginning of the rebate process. So
2 we began using essentially printing a rebate receipt with
3 each receipt at the warehouse. Many of you may have seen
4 those if you shop at Costco. Initially it was a mail-in
5 rebate program that was quite successful because it did
6 make it easier for our members to submit rebates, but
7 it's evolved into an electronic rebate program that has
8 really become popular and have been a fan favorite with
9 our members.

10 Essentially we worked with all of our
11 suppliers, and with few exceptions our suppliers have
12 joined us in this program where Costco has essentially
13 manages all the rebate programs independent, so we don't
14 have 200 supplier programs that are running through our
15 warehouse. We have rebate programs that run through our
16 warehouses to our members that Costco manages
17 unilaterally, with few exceptions. All rebates are set
18 up internally at Costco. The rebates are in the point of
19 sale system, and they are electronically transmitted to
20 our fulfillment partner who takes a submission from the
21 members, bumps it up against the database at the point of
22 sale, returns it to us for a validation process, and
23 ultimately is funded and remits to the members. So it's
24 a pretty quick and easy process.

25 One quick thing, the members this morning were

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1 talking a little bit about security of information. The
2 system we developed resides within the Costco system, and
3 so it has all the same internal controls as all our
4 financial systems, and other internal company controls.
5 So it's very secure information. Plus because we're
6 fortunate enough to have a membership base that we're
7 dealing with, the members really aren't required to put
8 anything that's not already known, basically name and
9 address, into the system, and that's just for the
10 remittance of the check. So when the member files for a
11 reimbursement or rebate it's fulfilled to the address
12 they select, but no additional information has to go into
13 the system.

14 From an internal administration perspective,
15 Costco sets up the rebate program, Costco runs it through
16 our buildings, Costco charges the suppliers the expense
17 for running that rebate program, and Costco is then
18 essentially in the control of assuring the highest levels
19 of fulfillment as well as operating the program and
20 efficiently as possible to reduce everyone's expenses.

21 Here's a copy of the rebate receipt that's
22 printed out on the membership, and I don't know how well
23 you can see it, but it's pretty similar to other point of
24 sale receipts that are printed out.

25 Our goal is to maximize the fulfillment, reduce

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1 suppliers pay the set-up fee, the suppliers pay the
2 transaction fee to administrate the program. So we want
3 to make sure the suppliers are vested in the program
4 financially in order for them to run a program through
5 our systems.

6 Kind of our redemption rates as it stands
7 today. It's a confusing slide. But basically if you
8 look at \$5 rebates, in our automated system today we get
9 a return of about 40 percent redemption, and that's with
10 an easy online methodology, as well as the option to
mail-in, about 40 percent. \$25 rebates, about 48

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1 Let's see, I guess the biggest thing for us is
2 someone mentioned earlier today if the members have a bad
3 experience with a rebate program that might influence
4 their decision to purchase in the future. And I think we
5 take that really seriously at Costco. It's a big deal to
6 us. We don't want to offer any program that our members
7 can't be thrilled with, and that we can't support at the
8 highest level. So we feel like we've been able to do
9 that through our fulfillment partner and our internal
10 systems that we've developed, but also we're finding that
11 when you do it the right way there's just a chance there
12 might be a better way to spend those dollars between you
13 and your supplier partners.

14 And so stay tuned on that, and we'll see what
15 rebates go in the future. Thank you.

16 [Applause.]

17 MS. BADGER: Thanks, Joe. And just for all of
18 you that need some dessert after lunch we have some
19 cookies on the side here where the coffee was, and those
20 cookies were purchased from Costco.

21 [Laughter.]

22 MS. BADGER: So, thanks, Joe, on both accounts.

23 Finally, we're very pleased to welcome
24 Ms. Linda Goldstein. Ms. Goldstein serves as the Vice-
25 President of Government and Legal Affairs for the

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1 Promotion Marketing Association, and is also a partner
2 with the law firm of Manatt, Phelps, and Phillips. And
3 in her remarks Ms. Goldstein will unveil for the first
4 time, your moderator hasn't even seen them yet, the PMA's
5 new guidelines for rebate promotions.

6 So welcome and many thanks for speaking with us
7 today.

8 [Applause.]

9 MS. GOLDSTEIN: Thank you. And we're delighted
10 to be here on behalf of the Promotion Marketing
11 Association. Every one of these events where we can get
12 industry and government together to talk about the issues
13 and collaborate on solutions, I think we have a wealth of
14 experience in learning that it tends to solve the problem
15 efficiently with everybody's interest in mind. So we're
16 glad to be here participating at yet another stellar
17 event.

18 Actually, let me just begin. I am here today
19 representing the Promotion Marketing Association. And
20 let me just tell you a little bit about who we are,
21 because I think that will help explain some of the
22 perspective that we took in defining best practices. We
23 are the leading trade association representing the
24 promotion marketing industry. Our members are quite
25 diverse. We have a lot of package goods companies,

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1 retailers, online marketers. But in addition to the
2 marketing segment of the community we also have promotion
3 agencies, fulfillment companies, and so really companies
4 that touch the rebate process from different sectors come
5 into play in our association. And so that forces, as
6 you'll see, some of what we're trying to identify to be a
7 little bit more general than the individualized specific
8 programs that you've heard about thus far.

9 We're not new as an association to trying to
10 deal with rebate issues. Actually for a very long time
11 there's been a joint initiative between the PMA and the
12 United States Postal Inspection Service, a rebate fraud
13 data center whose objective was to detect, deter, and
14 prevent rebate fraud, and actually they maintained a
15 database of people who through a variety of parameters
16 that were established were suspected of or were
17 determined to have committed some kind of a rebate fraud.
18 These people were identified and asked to sign voluntary
19 assurances of discontinuance. And it's a quite effective
20 program in combating consumer fraud.

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1 is a problem, a real problem for businesses.

2 So, as I said, some of our key learning points,
3 just from that experience were that rebate fraud is real,
4 that businesses can be victims too, and that ultimately
5 consumer protection needs need to be properly balanced
6 against the need to prevent customer fraud or fraud on
7 the businesses.

8 In thinking about how to approach the best
9 practices we took some considerations both from the
10 marketer's side and from the consumer's side. We believe
11 that rebates are a valuable promotional vehicle that
12 benefits both marketers and consumers. For consumers
13 there's a high perceived value, it's a genuine savings,
14 and I think as you heard this morning, if the experience
15 is good it's likely to stimulate future purchases.

16 For businesses, it's a highly effective
17 marketing tool. I've put some numbers up here just to
18 show the magnitude of rebates that are issued each year.
19 I'm going to caveat it by saying these are unaudited
20 figures, and really just designed to be illustrative
21 rather than to be quoted.

22 I think the key issues for consumers, and what
23 we've heard from our members where problems occur, are if
24 the terms of the rebate offer are unclear or ambiguous,

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1 And I think it's also important as we get into this
2 process to recognize that a one size fits all approach
3 doesn't work. I think the panel, this afternoon's panel
4 demonstrates it in and of itself that different
5 businesses, depending on their size, depending on the
6 nature of the products or services that they're offering
7 on their demographics, may have different approaches.
8 Online certainly is an efficient way, but for some people
9 that may not be an effective way for them.

10 So I think, again, we just looked at this from
11 the standpoint of standardized language, standardized
12 mechanical or operational procedures, could be
13 problematic for all businesses concerned. And I think we
14 also have to recognize that rebate practices are
15 evolving, and as technology changes practices change to
16 accommodate that. And so any regulation, legislation, or
17 even best practices has to be sufficiently fluid to
18 accommodate those evolving practices.

19 And we do need some conditions and restrictions
20 to protect against consumer fraud, but those have to be
21 balanced against the need to provide for appropriate
22 consumer protection.

23 We are concerned, there has been a marked
24 increase in legislative trends, rebate bills that have
25 been proposed, many have not passed, but they continue to

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1 come and they continue to become more restrictive. And
2 from a business standpoint our concern is if as we've
3 seen in other areas, like gift cards or sweepstakes, we
4 end up with inconsistent state regulations, what that
5 will likely mean is that marketers will offer these
6 programs less frequently. And for consumers that's not a
7 positive output.

8 And so we really hope that maybe today is the
9 start of a process to see just how far self-regulation
10 can go if different parts of the industry come together
11 to develop best practices. And I really feel the need to
12 say that what we're going to share with you today is just
13 one group's point of view. And I think there are lots of
14 different perspectives that will have to weigh in before
15 we can finally get a complete picture.

16 So in developing these practices, which I also
17 want to say continue to be a work in progress in part
18 because we really wanted to hear a lot of what was
19 discussed today and take that back to our members and see
20 how we might improve on what we're thinking thus far, but
21 we've focused on three aspects of the rebate offer: the
22 structure of the offer; the communication of the offer;
23 and the fulfillment of the offer.

24 There are some general overriding principles,
25 they sound logical and intuitive, but I think they're

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1 imposed, or limitations, no duplicate copies, or things
2 like that, have a reason or a basis to prevent fraud,
3 those should be acceptable. But the idea of preventing
4 fraud shouldn't be used as a basis to impose unreasonable
5 conditions.

6 In terms of communicating the offer, and I
7 think here is where we really need to have some
8 flexibility, and we intentionally have not specified
9 manner, time, or placement of disclosures, because it
10 will vary. Some of the disclosures will be very material
11 to the purchase decision. Other disclosures are very
12 important once the consumer needs to go through the
13 process of claiming the rebate, and that should dictate
14 where and how those disclosures are made. But as a
15 general rule, marketers should ensure that all relevant
16 information about the rebate offer is communicated at the
17 appropriate time. And, again, as I say, that can vary.

18 The terms of the rebate offer should be
19 presented in language that's clear, that's unambiguous,
20 and easy for the consumer to understand and follow.

21 We do think that there are certain material
22 terms and conditions of the offer that should be
23 disclosed in all instances. And those would include the
24 time; the identity of the product or products, in other
25 words, to be specific about which one, which products or

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1 provide in order to claim their rebate. And any material
2 exclusions, limitations, or restrictions.

3 Two principles we wanted to highlight outside
4 of the general requirements for clear and conspicuous
5 disclosure of material terms, is to really focus on not
6 misrepresenting the out of pocket cost to the consumer.
7 So if the law permits we think it's a best practice to
8 disclose both the pre-rebate price and a post-rebate
9 price so that the consumer knows exactly what each
10 element of the transaction is. And if the receipt of the
11 rebate is contingent on the consumer fulfilling certain
12 requirements, for example, if it's a rebate on a computer
13 but you've got to be a member of an online service for a
14 certain period of time, that should really be highlighted
15 prominently in the advertising, because that may be a
16 material inducement to the purchase.

17 On the fulfillment side, obviously the rebate
18 offer should be fulfilled in accordance with the offer
19 terms and conditions. They should be honored within the
20 time period specified, which should be of a reasonable
21 nature. They should be delivered to consumers in a
22 manner that we can reasonably expect that the consumer
23 will receive the rebate. So in some manner that's not
24 likely to be perceived as junk mail by the consumer, but
25 something that would indicate to the consumer that the

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1 contents of that envelope are important and that it would
2 be worth the consumer's while to open them.

3 If the marketer will be relying on a third
4 party to handle the fulfillment, again, we don't think
5 it's our role to set forth specific requirements for
6 third party fulfillment, but we do believe that our
7 members should conduct some due diligence on the third
8 party to ensure that they have the financial resources
9 and the personnel necessary to meet anticipated demands.
10 And that there should be a formal contract with the third
11 party that sets out the expectations of both parties and
12 what the respective obligations of both parties would be.

13 We think that the marketers need to work with
14 their third party fulfillment companies to make sure that
15 when there's an expected surge of consumer requests or
16 interest in the rebate that that third party fulfillment
company knows. So often some of the problem thgicu

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1 hand to meet those anticipated surges.

2 The marketers, or their third party fulfillment
3 company should have reasonable processes and procedures
4 in place to detect rebate fraud. We've learned through
5 the experience from the rebate data fraud center
6 experience that there are some indicators that you can
7 give to your third party fulfillment company that can be
8 early warning signs that there might be some fraud
9 occurring.

10 The marketers should maintain clear records of
11 the transaction. Consumers should be provided with
12 reasonable cost-free method of making inquiries about
13 their rebate, so there should be a cost-free customer
14 service system in place with appropriate hold times and
15 appropriate personnel to handle the inquiries in a timely
16 manner.

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1 MS. BADGER: After hearing from all of our
2 panelists on best practices, I think that we can sum it
3 up in one word, and that's CARE. And I came up with a
4 mnemonic because I basically can't help myself. C, be
5 consumer friendly, make sure to keep the terms and
6 conditions simple, something that consumers can follow,
7 and communicate clearly with your consumer. A, be
8 attentive, look for signs that problems are starting and
9 nip them in the bud. R, be responsible, and we saw that
10 from our manufacturer and retailer panelists today. Take
11 responsibility for all the facets of rebate fulfillment,
12 don't just pass the buck, or rebate promotion. And E,
13 where possible use electronic submissions, they're really
14 great for consumers, speed up the process, keep them
15 informed, and it seems to cut back on the costs of rebate
16 promotions as well.

17 So with that, I want to thank the panel as I've
18 learned a lot today, and I know that everyone in the
19 audience has. And thanks for your great presentations.

20 [Applause.]

21 MS. BADGER: And we have a lot of questions.
22 And we have several questions that focus on what happens
23 when the rebate check is not cashed by the consumers. So
24 perhaps Mike Reynolds from Parago could start first and
25 tell us what the policy is from the rebate processor's

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1 really need to have in place a parallel program for how
2 that property will be handled for escheatment purposes.
3 And it's no longer a situation where that can be a
4 windfall to the marketer if those checks are uncashed.
5 In fact, it can create greater headaches and greater
6 potential liability for the marketers.

7 MS. BADGER: Okay. The next question again for
8 Mike I think is how can a manufacturer like Staples, one
9 of your clients, gain access to your reports on
10 redemptions and submissions and so forth?

11 MR. REYNOLDS: How can Staples get it?

12 MS. BADGER: Staples, one of your clients.

13 MR. REYNOLDS: How do they get the data?

14 MS. BADGER: Right.

15 MR. REYNOLDS: Not the manufacturers but
16 Staples themselves?

17 MS. BADGER: It says, 'How can a manufacturer
18 gain access to Parago's reports for redemptions,
19 submissions, etcetera?'

20 MR. REYNOLDS: Sure. We provide reporting,
21 extensive reporting back to our clients on a weekly
22 basis. So if the client is Staples then the reporting
23 goes back to Staples. In some cases the manufacturer who
24 may be sponsoring that rebate promotion through Staples
25 wants to get the data as well, and basically that's just

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1 in cooperation with Staples. If our contract is directly
2 with Staples it's their data, it's not ours, we don't
3 have the ability to do anything with that without their
4 permission. So typically what will happen is the
5 manufacturer will work with Staples, and if that approval
6 is given then we're more than happy to provide all of the
7 data to the appropriate manufacturer. And our reporting
8 system is designed in such a way that it's very easy to
9 split out the reports by manufacturers.

10 MS. BADGER: Okay. And I'll throw this out to
11 anyone who wants to answer it. One of our audience
12 members wants to know, could you describe and/or give
13 examples of what a contingent rebate is?

14 Linda?

15 MS. GOLDSTEIN: Well, there are many examples,
16 but I think the one that is most common is you purchase
17 product and that product may be linked to a service. So
18 an example might be purchasing a phone and signing up for
19 wireless service and the rebate you only become eligible
20 for the rebate if you've remained a subscription member
21 of that service for a certain number of months. So that
22 the rebate -- the purchase itself is not qualifying you
23 for the rebate, there's some additional obligation that
24 has to be satisfied that won't occur until some point in
25 the future.

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1 MS. BADGER: Okay. And another audience member
2 would like to know whether rebate checks are subject to
3 the mail order rule, the FTC has a mail order rule, and
4 it provides that if you're going to send something late
5 you have to give notice, and also after a while you have
6 to give an opportunity to cancel. It does not --
7 although it could apply to or does apply to merchandise
8 premiums.

9 So if it's a product, then it applies. But if
10 it's cash, it doesn't.

11 And the second part of the question is what
12 should a manufacturer do when it's not making the stated
13 time period for mailing the rebate checks? And here the
14 admonition is don't put down something that you can't
15 meet. If you really can't meet the eight to ten weeks
16 then don't make the claim, and certainly don't continue
17 to make the claim if you find out that there's going to
18 be major delays or problems in meeting your promise. And
19 if something happens then use every reasonable effort
20 that you can to notify consumers of what kind of delay
21 they're looking at.

22 The next question is one for Mike Reynolds of
23 Parago. And it says, 'Some fulfillment houses outsource
24 data entry to data entry companies and use contracted
25 home workers to enter data, and how does Parago control

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1 that type of environment for accuracy and shrinkage of
2 lost materials?'

3 MR. REYNOLDS: That's a great question. At
4 Parago we have never used home workers. And largely the
5 industry has moved away from that practice. We have
6 never had that. We do use some outsource partners for
7 parts of the process. And those partners must meet
8 specific guidelines in order to work with us, including
9 things that would fall into the integrity camp, we do
10 substantial checks on them before they're ever allowed to
11 have any part of the rebate process.

12 But to the second part of the question, the key
13 here is two things: one, the outsource partner must be
14 keying directly into our transaction processing platform.
15 They cannot key into their own technology and then send
16 us a file, for instance. So it must be keyed directly
17 in, and therefore we are able to control that experience,
18 and control the accuracy of in this case the data entry
19 component of that. And then, two, we actually have
20 substantial measurements in metrics that we use for our
21 outsource partners on a monthly basis. And where they
22 may be under our service level requirements, then quite
23 frankly they are released as a partner and we no longer
24 work with them.

25 So we have some very, very stringent guidelines

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1 in place. And the use of those partners has helped
2 tremendously in terms of the speed and efficiency that
3 I've talked to, as well as a comment that Linda made in
4 terms of the seasonality of the business, and the peaks
5 and valleys, if you will, in terms of the volume. It
6 allows us to ramp up very quickly to accommodate the peak
7 seasons and the peak volume that comes as a result.

8 MS. BADGER: Thank you for that. The other
9 question we have is I think for Costco, and it says,
10 'Have you eliminated mail-in rebates totally?'

11 MR. GRACHEK: We still have a small percentage
12 of the actual mail-in. It's eligible for everyone to
13 mail in just because there could be and there are members
14 that prefer that method of submitting. So the lion's
15 share of all of our submissions are online, but we will
16 still offer that to members because there's always a few
17 members that prefer to do it that way. So it's member's
18 preference over anything else.

19 MS. BADGER: And I think the second part of
20 that question is, 'Do most of your manufacturers give
21 equal rebates given your new procedures, or have they
22 decreased the value of the rebates offered?'

23 MR. GRACHEK: I think that what happens is as
24 you evaluate the system you look at the cost of the
25 transaction, the cost of administration, and the

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1 So original information isn't nearly as
2 important as it used to be because the system data allows
3 us to do a much better job of protecting our dollars than
4 the old manual way of asking for original data.

5 MS. BADGER: Isn't the retailer really in a
6 very good position to use electronic rebate programs,
7 because they have access to the data from consumers?

8 MR. GRACHEK: Well, I mean we're in a unique
9 position because we're a membership club, and that makes
10 it easier for us. I'm sure grocery would have another
11 story to tell, or non-membership entities. But you can
12 still tie your exposure to your purchases or to your
13 sales to your customers, and you can tie it by location,
14 by date, by name in some cases because there's warranty
15 and everything else that has to go through it.

16 So I think for bigger dollar purchases with
17 bigger rebates, even the non-member retailers have
18 customer data that I think is helpful. So it's just kind
19 of the focus from the retailer. You're right, the
20 retailer has to focus on this because the manufacturer in
21 most cases doesn't have the ability to focus on it.

22 MR. REYNOLDS: Can I just add two pieces there?
23 One, is that we have seen over the last few years many
24 retailers taking a best practice, that being that they
25 actually print out at the point of sale a specific rebate

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1 receipt. Therefore, the original receipt, purchase
2 receipt, is still in the hands of the consumer, and the
3 rebate receipt is used for submission on the rebate.
4 That's point number one.

5 Point number two to your follow-up question,
6 Linda, is absolutely the beauty of the retailer is that
7 they've got the transaction data, and within that
8 transaction data it includes the purchased products and
9 their SKUs. So that is the best validation source by
10 far, and moving more to electronic submission is just a
11 logical approach. The difficulty is really for
12 manufacturers selling through a lot of different retail
13 channels, and that's much more difficult, because that
14 data is not readily available.

15 MS. BADGER: Okay. Well, we're out of time for
16 this panel. We'll have a 15 minute break. Come back at
17 3:30. I want to thank our panel once again for a
18 wonderful presentation.

19 [Applause.]

20 [BREAK]

21

22 **PANEL 5: THE REBATE DEBATE: LEGISLATE,**
23 **LITIGATE OR LOSE REBATES?**

24 MS. FAIR: Thank you for taking your seats so
25 we can start our last panel of the day. I'm Lesley Fair,

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1 I'm an attorney with the Bureau of Consumer Protection in
2 Washington. And is there a better place for me to be on
3 business for a couple of days than with my brothers and
4 sisters with the West Coast Regional Office of the FTC.

5 I'm also honored to be joined by some real big
6 names in this area. We've basically been tasked with one
7 of two things. The first thing we've been told to do is
8 either, here is our choice, come up with a solution to
9 the rebate questions addressed all day. Or number two, I
10 think it was figure out how Sanjay stayed so long on
11 American Idol.

12 [Laughter.]

13 MS. FAIR: So we've decided to take the easier
14 task, and these three panelists will be discussing
15 potential solutions today.

16 I am honored first to my right is Norma Garcia,
17 a Senior Staff Attorney with the West Coast Regional
18 Office of Consumer's Union, the nonprofit publisher of
19 Consumer Reports magazine. In the house I grew up in,
20 second I guess to either Dear Abby or Holy Scripture, was
21 Consumer Reports magazine. I think sometimes my mother
22 thinks I work for Consumer Reports magazine. So let's

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1 Next to Norma is Ed Kabak, who is the Chief
2 Legal Executive for the Promotion Marketing Association
3 based in New York. Before he took that position he had
4 extensive legal background in the advertising marketing
5 and promotion area. Ed is also a published author, a
6 book collector, and sort of a well-known raconteur, so
7 we're looking forward to the comments that he has today.

8 Finally, at the end of the row, Jeff Greenbaum,
9 a partner in the New York law firm of Frankfurt Kunitz
10 Klein & Selz. Jeff is the former chair of the Consumer
11 Affairs Committee of the New York City Bar. He's also a
12 member of the Promotion Marketing Association's
13 Government and Legal Affairs Committee. He also, to be
14 frank, has one of the most facile and interesting minds
15 of any attorney I know, which means that both it's always
16 interesting and stimulating to talk to him, and also by
17 the end of the conversation I feel like I'm back in the
18 middle of a law school exam. So we have a lot to look
19 forward to from these three great panelists.

20 I want to call your attention to the little
21 form, the results of our -- the questions that were asked
22 today. But before I do that, I really want to share one
23 form with you that I really thought had some amazing,
24 amazing results. Let me just read it to you briefly. It
25 said the top three problems, this person said the top

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1 four problems, sorry, we're not doing that, but what we
2 do know is according to our very unscientific study, what
3 a shock, I'm not suggesting that there might be a little
4 bit of home team bias here, but the number one problem,
5 according to the attendees today, was drum roll please,
6 consumer error. Second, drum roll, consumer rebate
7 fraud. And then we had a tie about for third, complex
8 and confusing offers, delays in processing, and the
9 problems with inconsistent industry standards with a need
10 for industry standards. As I said, were we to have a
11 hundred consumers or a hundred law enforcement officers,
12 a hundred other people in the audience, perhaps we might
13 get a slightly different response. But certainly this
14 lets us know a little bit about where folks are coming
15 from.

16 So let me start with just that question. I am
17 not Miss Cleo, we've already sued her, but something
18 tells me when I ask Norma Garcia if she -- if her top
19 three were the same as those top three, I don't think I'm
20 going out too far on a limb, to suggest she might have
21 some slightly different perspectives. Norma, what were
22 your -- how do you perceive these top three?

23 MS. GARCIA: Well, I'm happy to say you're not
24 on the limb alone. We certainly see these as concerns
25 that would naturally arise in the context of individuals

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1 who deal with this issue. But from the consumer

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1 to these top three?

2 MR. GREENBAUM: Well, I think that, and who
3 knows whether this falls in the top three or not, but the
4 advice that I give to clients is that, and I think it's a
5 critical thing that really has to come out of this day,
6 which just as an aside I'm so happy to be a part of this,
7 this is really one of the most incredible days in terms
8 of just the depth of the content, I mean the really
9 unbelievable way we've covered this material, and I just
10 really want to compliment you guys, because I feel like
11 all I do is go to conferences on advertising and this is
12 just, you know, one of the only ones that I've ever
13 haven't left the room for two hours to make phone calls.
14 So I really want to compliment you.

15 MS. FAIR: I'm a little concerned, because I'm
16 often speaking at those conferences, Jeff.

17 [Laughter.]

18 MR. GREENBAUM: I would never, I would never
19 leave the room for Lesley.

20 What I would want to say is I think the
21 critical issue here is training. And it's training
22 marketing people. In-house lawyers and outside lawyers
23 when they're faced with these issues, if they're faced
24 with a draft of a TV script or a produced TV commercial,
25 or a draft of a print ad, or a program that's already

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1 been developed and out there and now we're trying to
2 figure out how to advertise this thing. And if the
3 lawyers are getting involved in the process at this point
4 it's just way too late. We see all those disclosures
5 thrown up there on the screen and you go lawyers are
6 faced with programs that they're just not able to
7 advertise. So I think that one of the things that
8 lawyers really need to do is get with the marketing
9 people before these programs are developed and sort of
10 talk through, well if you're going to do this program
11 let's talk about what it's going to mean in terms of how
12 are we going to inform consumers in a clear and
13 understandable way how this program is going to work. If
14 you run a print ad with seven different rebate offers
15 with bundling eleven different products that involve
16 service credits and mail-in rebates, and in store instant
17 rebates in some circumstances, you're never going to be
18 able to advertise that thing properly.

19 So I think that one of the big messages here is
20 that in order to get something clear you're going to have
21 to start early on in the process. And if you teach the
22 marketing people, you know, what are the limits of what
23 you can advertise in a clear way, it's going to solve a
24 lot of these other problems.

25 MS. FAIR: Let's talk about when we look at

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1 every step of the way, let's talk first about consumer
2 education. Regardless of whether this is an accurate
3 reflection, I think we would all agree that it's just
4 good policy, it's good business, to do whatever can be
5 done to educate consumers. I think Marcy Sims already
6 took the an educated consumer is our best customer, I
7 would have preferred that for an FTC slogan, but they've
8 already got that.

9 How do we educate consumers? Assuming that
10 that's at least part of the issue here, what are the
11 effective ways do you think, and let me start with you,
12 Norma, to educate consumers?

13 MS. GARCIA: We think it's very important for
14 consumers to be educated, but they need to be educated
15 about something that really works. If we're talking
16 about educating consumers about a process that's too
17 complex or too cumbersome, then what's the point. In the
18 first place, we have to have a process that works for
19 consumers. Ultimately the consumer is your customer.
20 When consumers are unhappy you're going to be unhappy.
21 It's going to impact your bottom line. So I agree with
22 Jeff. When it comes to making sure that the people who
23 are responsible for getting the message out there have
24 the advice that they need on the front end to do it
25 effectively and to do it within the confines of the law.

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1 cumbersome. One of the things that came out of, I guess
2 Tim Silk's presentation, is one of the main reasons why
3 rebates aren't fulfilled is procrastination on the part
4 of consumers. That doesn't excuse the failure to make
5 appropriate disclosure when those kinds of situations
6 take place.

7 But education is certainly something that can
8 be done in little -- even in pamphlets or in a website
9 posting, and I think PMA from its standpoint will
10 probably do the same kind of thing on its website.

11 MS. FAIR: How many, how many consumers go to
12 the PMA website, though?

13 MR. KABAK: You know, we have an educational
14 foundation, so we are thinking actually of doing it, you
15 know, going forward with actually a separate educational
16 website. We do have the Consumer Week website as well,
17 for National Consumer's Week, so we do have already a
18 consumer website to deal with coupon counts, we deal with
19 the coupon counts. Yeah, we're a trade association as
20 well.

21 So, yes, the best solution for education really
22 is self-reliant publication by the marketers I think, and
23 that could be done in any number of a kind of ways.

24 MR. GREENBAUM: I would say that consumer
25 education is absolutely consistent with what advertising

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1 is about. Advertising is consumer education. And
2 advertisers haven't done their job properly if they
3 haven't clearly and accurately told consumers what it is
4 they're going to get, and what the terms are, what the
5 terms they're going to have to follow in order to get
6 those things.

7 So what I would say is this is the third event
8 that I've been to this week, and no one has asked the
9 question that was asked at the other two events, which is
10 how small can I make the disclosures in my advertising.
11 And, you know, the response is as you would expect, which
12 is well you have to educate consumers, are consumers
13 going to see the disclosures, are they going to read
14 them, and are they going to understand them. And I think
15 that consumers don't need to look to other places to
16 other organizations to educate consumers, they actually
17 have to do it in the advertising.

18 And I think the thing that I would say that's
19 absolutely critical, and one of the speakers but I can't
20 remember who said it, which is you got to listen to what
21 the consumers are saying. One of the pieces of advice
22 that I give clients is read your consumer complaints,
23 aggregate your consumer complaints. If people are
24 complaining that they're not getting their products on
25 time you got to look at, you got to look at that problem.

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1 decisions about what consumers really need to know.
2 Often cases you can cut a disclaimer in half and suddenly
3 turn it into something that is actually understandable to
4 consumers.

5 So I think the first thing I would say to a
6 marketer is take a look at your disclaimers, are people
7 really going to be able to wade through it, and if not,
8 take a hard look and start to cross some things out,
9 start to eliminate, find the right time to disclose each
10 piece of information. The point that Linda made in her
11 presentation about the best practices was there's no one
12 right answer about when information needs to be
13 disclosed. It's going to depend on the type of terms and
14 the type of offer, and I think you have to take a hard
15 look. If you take a one size fits all you create this
16 giant long paragraph that, you know, sort of makes you
17 feel better that you've included every possible scenario
18 that could possibly need to be included, you're going to
19 have a disclosure that's probably not going to make
20 anyone happy.

21 So I say start with less, and really figure out
22 what are the critical things that consumers need to know.

23 MS. GARCIA: I think the governing principles
24 have to be that the disclosure must be simple, it must be
25 clear, and it must be accurate. And if you use those as

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1 your guiding principles I think you will come to the sort
2 of conclusion that Jeff is suggesting here, and that is
3 you're making sure that people know what they should know
4 in a way that they can actually understand it. Otherwise
5 there's really no point to even writing the words if
6 they're not words that can communicate meaning.

7 MS. FAIR: I think one thing that crossed my
8 mind, I know a number of you in the audience were present
9 about five or six years ago at an event called
10 'Disclosure Exposure' that the Federal Trade Commission
11 put on with the National Advertising Division of the
12 Better Business Bureau. And we gave kind of a bad
13 example of an ad and had three leading ad agencies and
14 their attorneys redo it. And I thought the interesting
15 thing that they raised is the minute you start talking
16 about what should be in the big block of text you're kind
17 of on the wrong path already. That the best way to do it
18 is to incorporate it into the offer itself, whether
19 that's fonts, whether that's color, how that's done. But
20 how do you get the point across that disclosure doesn't
21 have to be done at the bottom of the page or in a
22 superscript, how do you convey that?

23 MR. GREENBAUM: I think one thing I would say
24 is that just incredibly revealing study that the FTC did
25 in connection with the review of the endorsement guides.

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1 one thing? And I think that those are difficult things

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1 is a solution by itself.

2 What's important, really, is the kind of self-
3 regulatory standard, and education, and compliance, and
4 better knowledge by all the parties.

5 I just don't see it as a solution to deal with
6 the problem. Because I think even in areas where there
7 has been enforcement in many cases there's not
8 necessarily intentional misrepresentation. But there are
9 errors, and there are mistakes, and the FTC is a very
10 judicious arbiter of when and under what circumstances to
11 bring cases.

12 So I don't think using an increased law
13 enforcement standard is necessarily the way to go.

14 MR. GREENBAUM: I think the thing I would say
15 is certainly the law enforcement that's happened has been
16 tremendously effective and influential to marketers, and
17 I think that we hear you. I think that when the FTC
18 takes action, whether it's a report, or whether it's a
19 workshop, or whether it's a new guide to industry that's
20 issued, I think we really hear you and we really try to
21 make adjustments based on that, and try and learn from
22 it. So I think that what the FTC's doing is working, and
23 I think that this workshop -- or at least it's the
24 beginning of a process that is working. And I think that
25 something like this now is going to have some effect,

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1 it's going to take some time for industry to digest it
2 and work on technological changes, work on just different
3 kinds of approaches. But I think it's a good productive
4 process.

5 MR. KABAK: One more point. Coming from many
6 years of being General Counsel different places, I mean
7 when the FTC goes after a company, a significant company,
8 or even a publically traded company and obtains a five to
9 ten million dollar judgment from it, people pay attention
10 to that. Lawyers and outside counsel usually walk around
11 corporations with a news clip of that in their pocket.
12 It's a very, very effective remedy when you're advising
13 clients.

14 MS. GARCIA: From our perspective, law
15 enforcement actions act as a deterrent to the sorts of
16 practices that really take advantage of consumers. It
17 sends a clear message to practitioners that they need to
18 do something differently. So there's an educational
19 component to it as well, as Jeff mentioned.

20 There's also another component that's really
21 important from the consumer perspective. And that is
22 that it creates consumer confidence in the regulatory
23 agencies that are charged with protecting the public
24 around these business practices. And from our
25 perspective that's a really good thing as well.

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1 MS. FAIR: Another thing that's been raised, I
2 guess kind of akin to the nutrition labeling on the back
3 of a can of soup or a can of beans, what about the
4 possibility some folks suggested of some kind of
5 standardized rebate form? Do you think that's part of
6 the solution, not part of the solution?

7 MR. GREENBAUM: I think it's not part of the
8 solution. I think that what we would say is that there's
9 a lot of different kinds of companies out there doing a
10 lot of different kinds of offers with a lot of different
11 kinds of products. I think the FTC has long believed in
12 not stifling creativity, but basically using Section 5 as
13 a way to look at practices and determine whether
14 something's either deceptive or unfair. I don't think
15 that, you know, either self-regulatory organizations or
16 the government should -- needs to at this point set-up a
17 nutrition label. I think there's lots of different ways
18 that we can accomplish a goal of clear communication, and
19 I think we have to continue to explore that.

20 MR. KABAK: I would just say the one size fits
21 all does create a problem in a lot of areas, including
22 the area of services, particularly when you're selling
23 services, not just products, it's very, very complex.

24 MS. GARCIA: I think even if you're not moving
25 towards standardized forms or language there should be an

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1 effort to move towards standardized simplicity, and
2 easing conditions for consumers in order to redeem their
3 rebates.

4 MS. FAIR: Some other people suggested FTC
5 guidance, possibly rule-making. What about that as a
6 solution, a possible solution to the problem?

7 MR. GREENBAUM: I think this may be a good time
8 to mention, again, sort of Connecticut and Rhode Island.
9 I think that there is certainly concern on the industry
10 part to the extent that the states started to continue,
11 continue to get into the business of adding new rebate
12 restrictions, new rebate requirements, that are
13 conflicting with other states, and are conflicting with
14 general industry practice. Because what you're going to
15 end up with is companies being forced to add more
16 disclosures and to make their offers more complicated.

17 And one of the questions that Eileen raised
18 that I don't think we got an answer to, which I wanted to
19 at least give my point of view on, which is that I think
that the effect that we've seen in Connecticut and Rhodees, and are

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1 rebates and if they're effective standards, I think
2 you're going to see less movement in the states to try
3 and pass laws to deal with the problems that arise in the
4 states. So to the extent that the FTC can take a
5 leadership role in creating standards that are protective
6 of consumers but at the same time leave room for the
7 marketplace to work, I think you're going to see a
8 positive effect in the states.

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1 So I think that what we're doing here is a
2 positive step. Letting regulations, letting self-
3 regulation have a chance, as Linda mentioned in her
4 presentation, is a good one. And I also think let
5 technology have an effect, because it think that it will
6 have a big one.

7 MS. GARCIA: Well, rebates have been around for
8 a while and there have been many opportunities to self-
9 regulate, and unfortunately those haven't always been
10 successful. To the extent they have been successful,
11 developing rules and guidelines really would be
12 consistent with those best practices. So those companies
13 that are already engaging in those practices really have
14 nothing to fear by the passage of or adoption of
15 additional rules.

16 There's plenty of room in this for everyone. I
17 mean obviously technology will evolve, and the FTC
18 hopefully will be very cognizant of that and leave room
19 in whatever rules they create to add some flexibility for
20 those sorts of developments. But self-regulation from
21 our perspective hasn't worked, and to the extent that it
22 has worked it shouldn't conflict with any strong rules
23 that are put in place by the FTC.

24 MR. KABAK: I would say going back to the same
25 issue that it's important to give industry always a

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1 intriguing ideas. What do we do right now, however, for
2 the 20 percent of Americans who are not online, typically
3 more likely to be older Americans or lower income
4 Americans?

5 MS. GARCIA: One way to deal with that is by
6 offering a rebate right at the cash register. That's the
7 great equalizer, right? It doesn't matter whether you
8 have a computer at home or if you even know how to use
9 one, you're going to get your rebate right when you
10 purchase that product. So that's one way to do it.

11 Another way perhaps is to have the next best
12 thing, which might be a kiosk located in a store that the
13 consumer can then go to, punch in a code, get the rebate
14 check. This is one way to certainly diminish the digital
15 divide.

16 MR. GREENBAUM: I think the one -- a couple
17 concerns that I have, the first that I'm concerned with
18 any steps we take that is going to take -- that are going
19 to take away the value of rebates to consumers who you're
20 getting the greatest value to them. I admit that I
21 bought an expensive electronic product recently and it
22 had a fairly long rebate period and I said I'll get to
23 it, I'll get to it, and I admit that I forgot to send the
24 rebate form in. So, you know, I think that maybe I'm not
25 the one, I'm not elderly, and I have online access, so

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1 [Laughter.]

2 MS. FAIR: But I think that raises the issue.

3 I think Ed, he used -- he dropped the F bomb there,

4 federal legislation. Some companies say, my gosh we have

5 a crazy quilt of state by state legislation. Other folks

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1 law that protects consumers, isn't it a good thing that
2 consumers in California have the same protections as
3 consumers in New York or Connecticut? I mean that's not
4 a bad approach. So obviously we have to look at what
5 sort of federal proposal we're talking about here. But
6 that's not necessarily a bad approach.

7 MS. FAIR: Well, I have a few final questions
8 at the end, but I want to give the audience a chance to
9 ask questions since we have such esteemed experts.

10 I also get to channel my inner Oprah, so let me
11 get the microphone, and trust me, I do have an inner
12 Oprah, to see what questions the attendees have for the
13 three experts we have on the panel.

14 Questions? Dr. Silk?

1 to give them a chance to self-regulate, I don't even
2 think they've had a chance yet, it's not consolidated.
3 So like how long do we wait for that to happen?

4 So I know that you have to give freedoms to the
5 firms. I want to give freedom to the firms. But there
6 is a behavioral advantage for all consumers to be able to
7 identify is this a rebate program. That's what you want
8 to do, you're trying to target these promotions.

9 And I don't think the instant rebate is part of
10 the issue, because rebates are a price discrimination
11 tactic, and there's nothing wrong with that, we have

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1 gave of the stop sign, and the reason why it's effective
2 is because it actually communicates what it needs to
3 communicate. So to the extent that rebates can be
4 standardized to communicate essential information to
5 consumers that's a good thing.

6 MS. FAIR: Other comments or questions? And if
7 you could identify yourself?

8 MS. BIXLER: Diana Bixler. And I'm a marketing
9 lawyer. And I would say that one of the things that
10 rebates communicates to consumers, when you use that
11 term, is that they need to submit something afterwards to
12 obtain the dollar value benefit of that. So to the
13 extent that you're suggesting that all, quote, rebates
14 should be payable at the point of purchase you're
15 essentially saying there will be no rebates, and
16 basically removing that option from the option to
17 promotional incentives that marketers have always
18 enjoyed.

19 The idea, I mean absent saying instant rebate,
20 everybody always assumes, or I hate to put thoughts into
21 people's minds, but increasingly recently states have
22 been adding a statutory definition of rebate, and in
23 every case it calls for submission of something after the
24 purchase to obtain the incentive to obtain the
25 promotional value. And should you have to give it to

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1 package but there's still going to be people that are
2 going to smoke.

3 So I think it is important to realize that
4 there are limits to what marketers can do. And we can be
5 reasonable and we can be clear about our offers, and we
6 can look to make them better and clearer and easier to

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1 But I do think it's not just about the
2 empirical data, it's about what would a reasonable person
3 looking at that offer and that ad believe. And I think
4 that that's in some level equally important, if not more
5 so, because that's the legal standard, than what
6 percentage of the breakage there is.

7 MS. GARCIA: What happens when the consumer
8 tries to follow instructions that are just so complex
9 that no one can figure them out. I know of a case where
10 an individual was trying to redeem her rebate, she
11 couldn't figure it out, she went back to the store to get
12 their advice on how to do it, they thought they gave her
13 the right advice, and guess what, it was wrong, she
14 couldn't collect. This happens.

15 So when we ask ourselves, our consumers of
16 course consumers have an obligation to follow
17 instructions. Everyone has that obligation. But what
18 instructions are we giving them? Are they instructions
19 that the reasonable consumer can follow? I certainly
20 hope so, because if not they start complaining. And when
21 they start complaining that adds heat under you, and
22 that's not a good thing for you either.

23 MS. FAIR: We have a question here. If you'll
24 identify yourself?

25 MR. WOODWARD: Hi, Greg Woodward, IMR Group. I

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1 just wanted to make two comments. First of all, I agree
2 completely with the concept that technology is really the
3 solution. And the second piece that the industry should
4 regulate itself, and I think that's important.

5 The number one thing is to be able to make the
6 consumer happy while allowing the manufacturers to
7 benefit from the value of breakage, or the rebate versus
8 the instant discount. We've developed that solution.
9 And basically you mentioned something about the
10 microphone, you mentioned an in-store kiosk and that's
11 what we're going on lines with. We're preparing to
12 launch an online solution and an in-store solution, which
13 is real time, which operates as a service to the consumer
14 for a fee, like a Coin Star machine would. This model is
15 designed to stay ahead of legislation in the areas of
16 liabilities and things like that. More importantly, it's
17 protected by an international portfolio of patents and
18 also can be implemented in the retail space without
19 modifying any existing systems.

20 So there's a technology solution.

21 MS. GARCIA: Can I ask you a question? What
22 are you fees like?

23 MR. WOODWARD: We don't charge fulfillment fees
24 to the manufacturers.

25 MS. GARCIA: How about the consumer?

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1 MR. WOODWARD: Eight percent.

2 MS. GARCIA: Eight percent of the total rebate?

3 MR. WOODWARD: Coin Star's 8.2. It's an option
4 to mail it in now. You can get a hundred percent on a
5 store gift card and the retailer pays the fee. So this
6 is something we started talking about at CES in January,
7 and hopefully the technology, hopefully your solution
8 will happen, the technology will solve the problems.

9 MS. GARCIA: Thank you.

10 MS. FAIR: Another question here?

11 MR. LAVERTU: Hi, my name is Fred Lavertu and
12 I'm from (inaudible). And I hope you'll allow me to be
13 your (inaudible) to your inner Oprah. It's a joke, I'm a
14 married man, I'm taken.

15 [Laughter.]

16 MR. LAVERTU: About the notion that the -- and
17 my wife will read this, true, and, hi, Suzy, by the way.

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1 suicide, and yet they still go on, how realistic is it to
2 expect the industry to regulate itself when the practices
3 themselves are first of all hurting themselves but still
4 go on, but obviously there's a profit motive behind it.
5 So how can we, or what can we or the industry offer to
6 do, or prepare to do, to regulate itself?

7 MR. GREENBAUM: You know, I think those are
8 obviously great questions, and I think that there are no
9 easy solutions. And I think this is one step among many
10 steps to try to look for a solution. I mean certainly
11 you can post speed limit signs on the highway, but unless
12 Lesley's driving you to work in the morning the federal
13 government is not going to ensure that you don't go over
14 the speed limits.

15 So I think that there is not one easy way to
16 solve the problem and I think that federal legislation or
17 a patchwork of state legislation is not going to solve
18 the problem either. We're still going to have problems.
19 We're still going to have offers that are confusing. And
20 I think that the better solution is certainly this kind
21 of discussion, education, and looking to technology to
22 sort of enable marketers in a cost-effective way to make
23 the consumer better.

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1 answer, and given that it's a U.S. problem I'm not going
2 to comment on it, but what -- you've sort of answered my
3 question, but what can the industry do? I mean I realize
4 that you cannot stop me from driving my car 200 miles an
5 hour if I feel like it, but as the people who are driving
6 the car, what do you propose to do to help solve the
7 matter? In other words, are you going to slow down? Or
8 how are you going to do it.

9 MR. GREENBAUM: Well, you know, I'm not, look,
10 I'm not here representing a specific company, so I don't
11 think that I actually have specific proposals that I want
12 to make on behalf of anyone other than to say that I
13 think that these kinds of issues are the part of the
14 discussions that companies are having. Companies really
15 truly are looking for solutions and they don't want
16 unhappy consumers. And I've never once had a discussion
17 with a client ever where they said what can we do to make
18 people not redeem this offer. And, you know, oh what
19 great news, suddenly this rebate offer didn't cost us
20 anything.

21 I think that the reality is these companies
22 want repeat customers, they don't want the brand suicide.
23 But I think the reality is is that change takes time and
24 change is often very expensive, especially when you're
25 talking about the redesign of big company systems and

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1 websites and all that. But I think we're moving in the
2 right direction. And I think some of the changes we've
3 seen today are really incredible examples of what can be
4 done, and I think that this is just the beginning of
5 seeing a lot more of that, at least hopefully it is.

6 MS. FAIR: Time for one more question.

7 MR. GLASSER: Hi, Roy Glasser. I spoke before.
8 I'd like to say first that as a consumer I think that
9 something needs to be done. The regulation, I think
10 there needs to be some kinds of it. But as far as the
11 forms go, I think if they were templates and the
12 manufacturers could say well we'll pick this, this, and
13 those conditions from it, and the wording was understood,
14 they could see the totality of what they might choose,
15 and they could then pick whatever they want to be
16 smaller. But there has to be something. This concept of

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1 good thing to say there, which is this is not about
2 there's always going to be a small percentage of
3 companies that are the bad guys. This is not about the
4 bad guys. And we don't want to develop a system of best
5 practices or legislate based on the sort of bad out-of-
6 line acts of a few. We have to look at those people are
7 going to be dealt with, there's sufficient authority both
8 at the federal and state level to deal with it. And
9 really what we're looking at here is for the people who
10 are trying to do it the right way and who are looking for
11 solutions how can we best help them to do that.

12 MR. KABAK: I would just say self-regulatory
13 actions have taken place in a lot of industries, you've
14 got (inaudible), you got NAD, Children's Food Initiative,
15 and they need to be followed and dealt with, but they are
16 an intelligent way of motivating people who have a real
17 business and economic interest in proceeding fairly with
18 consumers and honestly in a reasonable way to continue to
19 do business with the consumers that also like this
20 process, and without necessarily having the heavy hand of
21 regulation and federal regulation brought down upon the
22 industry.

23 MS. FAIR: We have, I'm sorry, Norma?

24 MS. GARCIA: One last comment on that.

25 Developing laws or regulations that are designed to get

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1 at the practices of even just the bad actors, that's a
2 good thing. If you're doing the right thing these are
3 not going to impact you at all. They're going to clean
4 up the industry, they're going to create greater consumer
5 confidence, and that's all positive.

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1 for the consumers themselves to be better educated and
2 learn to read better.

3 MR. GREENBAUM: I think this is a very, very

1 web page. That web page will remain active for the
2 foreseeable future.

3 Like I said, all the Power Point presentations
4 will be up in the near future, as will the transcript of
5 the event once it's ready.

6 And most importantly, the email address that
7 many of you used to preregister will remain active. And
8 we urge all of the attendees here who were not able to
9 participate, who couldn't comment or question as they
10 wish, to use that email address to submit a comment once
11 you've digested what went on here, and please let us
12 benefit from your thoughts on the matter. So anything
13 you would like to send us by way of that email address we
14 would greatly appreciate.

15 MS. FAIR: What's the email address?

Mv1n198.OLA6/ ecordaddress we

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TRANSCRIPTIONIST'S CERTIFICATION

I, V, Oliver, a duly designated transcriptionist, do hereby declare and certify under penalty of perjury that the foregoing pages 1 through 224

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