

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

GATEWAY 2000, INC., a corporation.

DOCKET NO.

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act ("the Warranty Act"), 15 U.S.C. § 2301 et seq., and Rules 701 and 702, 16 C.F.R. Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, and the Federal Trade Commission Act, 15 U.S.C. § 41 et seq., and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gateway 2000, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Rules, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH ONE: The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, and in Rules 701 and 702, 16 C.F.R. §§ 701.1 and 702, promulgated thereunder shall apply to the terms used in this complaint.

PARAGRAPH TWO: Respondent Gateway 2000, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 610 Gateway Drive, North Sioux City, SD 57049-2000.

PARAGRAPH THREE: The acts and practices of respondent alleged in this Complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PARAGRAPH FOUR: Respondent is now and has been engaged in the direct marketing of personal computers throughout the United States. In the operation of its business, respondent is now and has been distributing, advertising, offering for sale and selling, among other items, IBM-compatible desktop, notebook and subnotebook personal computers, software, printers, modems, and monitors, all of which are consumer products. Therefore, respondent is a supplier of consumer products.

PARAGRAPH FIVE: In the ordinary course and conduct of its aforesaid business, respondent sells or offers for sale consumer products for purposes other than resale or use in the ordinary course of the buyer's business. Therefore, respondent is a seller of consumer products.

VIOLATIONS OF SECTION 5(a)(1) OF THE FTC ACT

PARAGRAPH SIX: Respondent has disseminated or has caused to be disseminated advertisements, promotional materials and written warranties for its products, including but not necessarily limited to the attached Exhibits 1 through 9.

Money-back Guarantee Claims

PARAGRAPH SEVEN: The advertisements and promotional materials referred to in PARAGRAPH SIX, including but not necessarily limited to the attached Exhibits 2

PARAGRAPH THIRTEEN: In truth and in fact, regardless of geographic location, purchasers of the warranted products, upon request to respondent, did not always receive the free on-site services of a technician; rather, it was the policy and practice of the respondent that it did not send a technician to provide on-site service until the respondent diagnosed the problem over the telephone and determined that the consumer could not make the repair.

PARAGRAPH FOURTEEN: Therefore, the representations set forth in PARAGRAPH TWELVE were, and are, misleading and constitute unfair or deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

Deceptive Warranty Language About Consumer Remedies

PARAGRAPH FIFTEEN: In the ordinary course and conduct of its business, respondent has disseminated or has caused to be disseminated written warranties, including but not necessarily limited to the attached Exhibit 1, which contain the following language:

Under no circumstances shall Gateway 2000 be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict liability, or any other legal theory . . .

PARAGRAPH SIXTEEN: Through the use of the statement referred to in PARAGRAPH FIFTEEN, and other statements not specifically set forth herein, respondent has represented, directly or by implication, that consumers have no remedies regarding claims based upon incidental or consequential damages.

PARAGRAPH SEVENTEEN: In truth and in fact, some states do not allow the exclusion or limitation of incidental or consequential damages, and consumers in those states do have remedies regarding claims based upon incidental or consequential damages.

PARAGRAPH EIGHTEEN: Therefore, the representations set forth in PARAGRAPH SIXTEEN were, and are, false and misleading and constitute unfair or deceptive acts or practices in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

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PARAGRAPH TWENTY-ONE: In the ordinary course and conduct of its business, respondent has given or offered to give written warranties, and is therefore a warrantor as that term is defined in Section 701.1(g) of the Disclosure Rule, 16 C.F.R. § 701.1(g).

PARAGRAPH TWENTY-TWO: In the ordinary course and conduct of its business, respondent has provided written warranties excluding incidental or consequential damages, but has failed to make, as required by Section 701.3(a)(8) of the Disclosure Rule, 16 C.F.R. § 701.3(a)(8), the following disclosure: "Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you."

PARAGRAPH TWENTY-THREE: In the ordinary course and conduct of its business, respondent has provided written warranties but has failed to make, as required by Section 701.3(a)(9) of the Disclosure Rule, 16 C.F.R. § 701.3(a)(9), the following disclosure: "This warranty gives you specific legal rights, and you may also have other rights which vary from State to State."

PARAGRAPH TWENTY-FOUR: Section 110(b) of the Warranty Act mandates that the failure to comply with a Rule promulgated under the Warranty Act is a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1). 15 U.S.C. § 2310(b). Therefore, Gateway's failure to comply with the provisions of the Disclosure Rule, 16 C.F.R. § 701, constituted and now constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

VIOLETIONS OF THE WARRANTY ACT

PARAGRAPH TWENTY-FIVE: Section 108 of the Warranty Act provides that no supplier may disclaim or modify any implied warranty, except by limiting the duration of an implied warranty to the duration of a written warranty of reasonable duration, if the supplier makes any written warranty to the consumer with respect to a consumer product. 15 U.S.C. § 2308.

PARAGRAPH TWENTY-SIX: In the ordinary course and conduct of its business as a supplier, respondent has made written warranties, including but not necessarily limited to the attached Exhibit 1, which contain the following language:

DISCLAIMER OF WARRANTIES

THE WARRANTY STATED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THIS PRODUCT. ALL OTHER WARRANTIES,

By the Commission.

Donald S. Clark
Secretary