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NORTHERN DISTRICT OF CALIFORNIA
EMC

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10 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

11 **CV 09 0124**

12 FEDERAL TRADE COMMISSION,
13 Plaintiff,
14
15 v.
16 MARKET DEVELOPMENT SPECIALISTS,
INC., a corporation, also d/b/a
Wintergreen Systems, and
17 JOHN LEVY, individually and as an officer of
18 Market Development Specialists, Inc.,
19 Defendants.

Case No. _____
**COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF**

20
21
22 Plaintiff, the Federal Trade Commission ("FTC"), through its undersigned attorneys,
alleges as follows:

23
24 1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade
25 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent injunction, rescission of
26 contracts, restitution, disgorgement of ill-gotten gains, and other equitable relief against the
27 Defendants for engaging in deceptive acts or practices in connection with the advertising of
28 mail-in rebates, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1 **JURISDICTION AND VENUE**

2 2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a) and
3 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

4 3. Venue is proper in this District under 28 U.S.C. § 1391(b), and (c), and 15 U.S.C.
5 § 53(b).

6 **INTRADISTRICT ASSIGNMENT**

7 4. The claims are based on violations that were directed at residents of San
8 Francisco and elsewhere.

9 **PLAINTIFF**

10 5. Plaintiff FTC is an independent agency of the United States Government created
11 by statute. *See* 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C.
12 § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The
13 FTC, through its attorneys, may initiate federal district court proceedings to enjoin violations of
14 the FTC Act and to secure such equitable relief, including rescission of contracts, restitution, and
15 disgorgement of ill-gotten gains, as may be appropriate in each case. 15 U.S.C. § 53(b).

16 **DEFENDANTS**

17 6. Defendant Market Development Specialists, Inc. ("MDS"), is an Indiana
18 corporation with its principal place of business at 2510 Sterling Ave, Elkhart, IN 46516. MDS
19 does business as "Wintergreen Systems." MDS has advertised, offered for sale, sold, and
20 distributed products to the public, including computer-related hardware and other consumer
21 electronics products. MDS has acted as a reseller of many products, including Hanns-G LCD
22 monitors and Memorex Portable DVD players. MDS has distributed these products to the public
23 through retailers of consumer electronics products, including Office Depot, PC Connection,
24 Buy.com, PC Mall, and Woot.com. To make its products more attractive to these retailers and
25 their customers, MDS has offered numerous mail-in rebates ranging from \$20 to \$150 in value.
26 MDS transacts or has transacted business in this District.

27 7. Defendant John Levy is the president of MDS. At all times material to this
28 complaint, acting alone or in concert with others, he has formulated, directed, controlled, or

1 participated in the acts and practices of MDS, including the acts and practices set forth in this
2 complaint. He transacts or has transacted business in this District.

3 8. In April 2006, Defendant MDS entered into an Assurance of Voluntary
4 Compliance (“Assurance”) with the State of Indiana relating to its rebate practices. Among
5 other things, the Assurance required MDS to promptly process all timely requests and to deliver
6 rebates within eight weeks of receiving a properly completed rebate request. Defendant Levy
7 signed the Assurance as president of MDS.

8 **COMMERCE**

9 9. The acts and practices of the Defendants, as alleged herein, have been in or
10 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

11 **DEFENDANTS’ BUSINESS ACTIVITIES**

12 10. Since April 2006, Defendants have disseminated or have caused to be
13 disseminated rebate forms for mail-in rebates, including but not necessarily limited to the
14 attached Exhibits A-B. These rebate forms contain the following statements:

- 15 a. Get \$100 Back by mail
16 Hanns-G 19" LCD Monitor
17
18 “It’s Fast & Easy”
19
20 • Purchase must be made between 10/9/06 and 12/31/06
21 • All requests must be postmarked by 01/30/07
22
23 Allow at least 10 weeks for processing.

(Exhibit A, rebate form for a MDS-sponsored rebate program for Hanns-G monitors purchased at Buy.com).

- 24 b. Get \$90 Back by mail
25 Hanns-G 19" LCD Monitor
26
27 “It’s Fast & Easy”
28
29 • Purchase must be made between 11/02/06 and 12/31/06
30 • All requests must be postmarked by 01/30/07
31
32 Allow at least 10 weeks for processing.

(Exhibit B, rebate form for a MDS-sponsored rebate program for Hanns-G monitors purchased at Office Depot).

11. In numerous instances, defendants did not mail rebate checks to consumers who

1 purchased the advertised products or did not mail them to consumers within the time promised.
2 In fact, defendants failed to mail rebate checks to the vast majority of consumers who submitted
3 valid requests for rebates. As a result, thousands of consumers never received a rebate check
4 from defendants. Moreover, those minority of consumers who actually received a rebate check
5 from defendants experienced substantial delays, including delays of ten weeks or longer.

6 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

7 12. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts
8 or practices in or affecting commerce.”

9 **COUNT I**

10 13. Through the means described in Paragraph 10, Defendants have represented,
11 expressly or by implication, that rebate checks will be mailed to purchasers of the advertised
12 product within approximately ten weeks after receipt of their valid requests.

13 14. The representation set forth in Paragraph 13 is false. Therefore, the making of the
14 representation set forth in Paragraph 13 above constitutes a deceptive practice, in or affecting
15 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

16 **CONSUMER INJURY**

17 15. Consumers throughout the United States have suffered substantial monetary loss
18 as a result of Defendants’ unlawful acts or practices. In addition, Defendants have been unjustly
19 enriched as a result of their unlawful practices. Absent relief by this Court, Defendants are
20 likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

21
22 **THIS COURT’S POWER TO GRANT RELIEF**

23 16. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
24 injunctive and such other relief as the Court may deem appropriate to halt and redress violations
25 of the FTC Act. The Court, in the exercise of its equitable jurisdiction, may award other
26 ancillary relief, including, but not limited to, rescission of contracts, restitution, and the
27 disgorgement of ill-gotten gains, to prevent and remedy injury caused by Defendants’ law
28 violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

1. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants.

2. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and


3. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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Regional Director

Dated: 1/9/09


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