UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
SYNCRONYS SOFTCORP, a corporation,	)	

RAINER POERTNER,
    individually and as an officer
      of the corporation,
	)	DOCKET NO. C-3688

DANIEL G. TAYLOR,
    individually and as an officer
    of the corporation, and
	)	

WENDELL BROWN,
    individually and as an officer
    of the corporation.
	)	

COMPLAINT

The Federal Trade Commission, having reason to believe that Syncronys Softcorp, a corporation, and Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1.   Respondent Syncronys Softcorp is a Nevada corporation with its principal office or place of business at 3958 Ince Boulevard, Culver City, California 90232.

2.   Respondent Rainer Poertner is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in

this complaint. His principal office or place of business is the same as that of Syncronys Softcorp.

3.   Respondent Daniel G. Taylor is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Syncronys Softcorp.

4.   Respondent Wendell Brown is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Syncronys Softcorp.

5.   Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed to the public software products intended to improve the performance of personal computers, including "SoftRAM" and "SoftRAM[95]."

6.   The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

<u>Background</u>

7.   For a computer to work, it must "load" its own operating instructions, the applications programs being used (such as word processing, spreadsheet, and database programs), and the data being worked on into its "random access memory," often referred to as "RAM." As computers' operating instructions and applications programs have become more powerful, they generally have become more "memory intensive," *i.e,* they have needed more RAM to load and run properly. This has been true of the "Windows" operating systems manufactured by Microsoft, Inc. -- the predominant operating systems in personal computers -- and for applications programs sold for use with them.

8.   When a computer has inadequate RAM for a user's demands, the computer may operate sluggishly, refuse to run large or multiple programs, or "crash," in effect shutting down catastrophically with resultant loss of data. Additional RAM, however, generally can be purchased and installed in a computer in order to mitigate or remedy these problems. RAM is measured in "megabytes," often abbreviated as "MB," and is purchased in the form of memory chips that are inserted into the computer's processor. Additional RAM

is relatively expensive, and personal computer users often spend several hundred dollars to purchase and install additional RAM adequate to their needs.

9.   In or about May 1995, respondents began marketing a software product called "SoftRAM." As is more fully described subsequently, respondents promoted SoftRAM to users of the Windows 3.0, 3.1, and 3.11 operating systems (collectively "Windows 3.x") as a substantially less expensive, but functionally identical, alternative to the purchase and installation of additional RAM. To date, respondents have sold approximately 100,000 copies of SoftRAM for that purpose.

10. In or about August 1995, Microsoft, Inc. introduced "Windows 95," a much publicized and awaited operating system said to embody numerous and substantial improvements over Windows 3.x. At the time of its release, it was expected that there would be an unparalleled demand for Windows 95, both as installed in new computers and as "upgrades" to computers using Windows 3.x. Both before and after the introduction of Windows 95, considerable notice was taken by prospective purchasers of the fact that Windows 95 and applications sold for use with it would be particularly "memory hungry," requiring at least eight megabytes of RAM and preferably sixteen. The great number of computer users with only four or eight megabytes of RAM in their computers were frequently cautioned that they could upgrade effectively to Windows 95 only by acquiring additional RAM.

11. As is more fully described subsequently, in or about August 1995, respondents began the promotion and sale of "SoftRAM^{95}," bearing Microsoft's logo "Designed for Windows 95," to prospective and actual Windows 95 users as a substantially less expensive, but functionally identical, alternative to the purchase and installation of additional RAM. To date, respondents have sold approximately 600,000 copies of SoftRAM^{95} for that purpose.

<u>SoftRAM</u>

12. Since at least May 1995, respondents have disseminated or have caused to be disseminated advertisements and product packaging that make a variety of effectiveness claims for SoftRAM. Respondents' advertisements and product packaging include, but are not necessarily limited to, the attached Exhibit 1. These advertisements and product packages contain the following statements:

   A.   "**Double Your Memory**
        seamlessly with SoftRAM. Eliminate the expense and
        hassle of opening your PC to install hard RAM."
        (Emphasis in original; Exhibit 1).

4

B.   **"Imagine: 4MB becomes 8**
8 becomes 16 . . . You become doubly productive. Open
more applications simultaneously and say good-bye to
[computer screen messages indicating error due to
insufficient memory]." (Emphasis in original;
Exhibit 1).

C.   **"SoftRAM's Patented Technologies**
take your Windows memory and effectively double it.
And SoftRAM's unique RAM Analyst . . . pre-calculates
the most efficient compression method for each RAM page
of memory."   (Emphasis in original; Exhibit 1).

13.   Through the means described in Paragraph 12, respondents
have represented, expressly or by implication, that:

A.   SoftRAM uses compression technology to double the RAM
available to a computer using Windows 3.x;

B.   SoftRAM produces the effect of doubling RAM in a
computer using Windows 3.x, such that a computer with
4MB of RAM will behave as though it had 8MB of RAM and
a computer with 8MB of RAM will behave as though it had
16MB of RAM;

C.   Use of SoftRAM will permit a Windows 3.x user to open
more applications simultaneously on a computer as
though the amount of RAM in that computer had been
doubled; and

D.   Use of SoftRAM in a computer using Windows 3.x will
substantially reduce or eliminate the occurrence of
computer screen messages that indicate that the
computer has insufficient memory to run the user's
application(s).

14.   Through the means described in Paragraph 12, respondents
have represented, expressly or by implication, that they
possessed and relied upon a reasonable basis that substantiated
the representations set forth in Paragraph 13, at the time the
representations were made.

15.   In truth and in fact, respondents did not possess and rely
upon a reasonable basis that substantiated the representations
set forth in Paragraph 13, at the time the representations were
made. Therefore, the representation set forth in Paragraph 14
was, and is, false or misleading.

<u>SoftRAM^{95}</u>

16. Since at least August 1995, respondents have disseminated or
caused to be disseminated advertisements and product packaging
that make a variety of effectiveness claims for SoftRAM^{95}.
Respondents' advertisements and product packaging include, but
are not necessarily limited to, the attached Exhibits 2, 3, and
4. These advertisements and product packages contain the
following statements and depictions:

A. **"ANNOUNCING THE ONLY DISK THAT DOUBLES YOUR MEMORY FOR
    WINDOWS 95."** (Emphasis in original; Exhibit 2).

B. "Why risk the technical nightmare and expense of adding
    hard RAM? Just click on SoftRAM^{95}, the only software
    to instantly speed up Windows 95 and Windows 3.0 and
    higher." (Exhibit 2).

C. "Doubling RAM doesn't have to be hard. Install
    SoftRAM^{95} and instantly speed up Windows 95 *and* Windows
    3.0 and higher. Run multimedia and RAM hungry
    applications. Open more applications simultaneously."
    (Emphasis in original; Exhibit 3).

D. "4MB becomes at least 8MB. 8MB becomes at least 16MB.
    . . . (In fact, you can get up to 5 times more
    memory.)" (Exhibit 3).

E. "Designed for Microsoft Windows 95 [depicting the
    Microsoft logo]." (Exhibit 4).

F. **"Double Your Memory**
    and expand your System Resources seamlessly with
    SoftRAM^{95}. Eliminate the expense and hassle of opening
    your PC to install HardRAM chips." (Emphasis in
    original; Exhibit 4).

G. **"Imagine: 4MB becomes 8MB**
    8MB becomes 16MB . . . You become doubly productive."
    (Emphasis in original; Exhibit 4).

H. "Say good-bye to 'Out-of-Memory' messages."
    (Exhibit 4).

I. **"SoftRAM^{95}'s Patent Pending**
    RAM compression technology takes your Windows memory
    and at least doubles it. In fact, SoftRAM^{95} now
    achieves RAM compression ratios of up to 5x and
    higher." (Emphasis in original; Exhibit 4).

17. Through the means described in Paragraph 16, respondents have represented, expressly or by implication, that:

    A.   SoftRAM[95] increases RAM in a computer using Windows 95 to a greater extent than other software products;

    B.   SoftRAM[95] uses compression technology to at least double the RAM available to a computer using Windows 3.x or Windows 95, and achieves RAM compression ratios of up to five times and higher in such a computer;

    C.   SoftRAM[95] produces the effect of at least doubling RAM in a computer using Windows 3.x or Windows 95, such that a computer with 4MB of RAM will behave as though it had 8MB of RAM and a computer with 8MB of RAM will behave as though it had 16MB of RAM;

    D.   Use of SoftRAM[95] in a computer will speed up Windows 3.x or Windows 95 as though the amount of RAM in that computer had been at least doubled;

    E.   Use of SoftRAM[95] will permit a Windows 3.x or Windows 95 user to run larger applications on a computer, and to open more applications simultaneously, as though the amount of RAM in that computer had been at least doubled;

    F.   Use of SoftRAM[95] with Windows 3.x or Windows 95 will result in expanded systems resources on a computer and will substantially reduce or eliminate the occurrence of computer screen messages that indicate that the computer has insufficient memory to run the user's application(s); and

    G.   Microsoft, Inc. has licensed, endorsed, or otherwise approved SoftRAM[95] for use with Windows 95.

18. In truth and in fact,

    A.   SoftRAM[95] does not increase RAM in a computer using Windows 95 to a greater extent than other software products;

    B.   SoftRAM[95] does not use compression technology or at least double the RAM available to a computer using Windows 95, nor does it achieve RAM compression ratios of up to five times and higher in a computer using Windows 95; in fact, SoftRAM[95] does not increase the RAM available to a computer using Windows 95;

C. SoftRAM[95] does not produce the effect of at least doubling RAM in a computer using Windows 95, such that a computer with 4MB of RAM will behave as though it had 8MB of RAM and a computer with 8MB of RAM will behave as though it had 16MB of RAM; in fact, SoftRAM[95] does not produce the effect of increasing RAM in a computer using Windows 95;

D. Use of SoftRAM[95] in a computer will not speed up Windows 95 as though the amount of RAM in that computer had been at least doubled; in fact, use of SoftRAM[95] will not speed up Windows 95;

E. Use of SoftRAM[95] will not permit a Windows 95 user to run larger applications on a computer, or to open more applications simultaneously, as though the amount of RAM in that computer had been at least doubled; in fact, use of SoftRAM[95] will not permit a Windows 95 user to run larger applications or to open more applications simultaneously;

F. Use of SoftRAM[95] with Windows 95 will not result in expanded systems resources on a computer and will not substantially reduce or eliminate the occurrence of computer screen messages that indicate that the computer has insufficient memory to run the user's application(s); and

G. Microsoft, Inc. has not licensed, endorsed, or otherwise approved SoftRAM[95] for use with Windows 95.

Therefore, the representations set forth in Paragraph 17, to the extent applicable to Windows 95, were, and are, false or misleading.

19. Through the means described in Paragraph 16, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 17, subparagraphs A through F, at the time the representations were made.

20. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 17, subparagraphs A through F, at the time the representations were made. Therefore, the representation set forth in Paragraph 19 was, and is, false or misleading.

21. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this seventh day of October, 1996, has issued this complaint against respondents.

By the Commission.

                                    Donald S. Clark
                                    Secretary
SEAL: