

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
 Mary L. Azcuenaga
 Janet D. Steiger
 Roscoe B. Starek, III
 Christine A. Varney

In the Matter of)	
)	
)	DOCKET NO. C-3688
SYNCRONYS SOFTCORP,)	
a corporation,)	DECISION AND
)	ORDER
RAINER POERTNER,)	
individually and as an officer)	
of the corporation,)	
)	
DANIEL G. TAYLOR,)	
individually and as an officer)	
of the corporation, and)	
)	
WENDELL BROWN,)	
individually and as an officer)	
of the corporation.)	
)	
)	

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the New York Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

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

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

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

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

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Random access memory (RAM)" is the primary working memory in a computer. The instructions provided by a computer program and the data being worked on are stored in RAM while the program is running. Additional RAM, measured in megabytes ("MBs"), can be purchased in the form of microchips that are physically inserted into a computer.
2. "Compression technology" is a process which allows more information to reside in RAM. Compression technology eliminates redundant data by utilizing various recipes for analyzing and transforming it.
3. "Windows 95" refers to the Windows 95 software operating system manufactured by Microsoft, Inc.
4. "Substantially similar product" shall mean any software product that uses or purports to use compression technology and that is intended or purports to increase the amount of RAM in a computer or to accomplish any effect similar to one that would be caused by increasing the amount of RAM in a computer. These effects include, but are not limited to, increase in speed of computer operations, increase in size or number of applications that can be run simultaneously, and expansion of systems resources or reduction or elimination of "insufficient memory" errors or messages.
5. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
6. Unless otherwise specified, "respondents" shall mean Synchronys Softcorp, a corporation, its successors and assigns and its officers; Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation; and each of the above's agents, representatives, and employees.
7. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of SoftRAM⁹⁵ or any substantially similar product in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, that:

- A. Such product increases RAM in a computer using Windows 95 to a greater extent than other software products;
- B. Such product uses compression technology to increase the RAM available to a computer using Windows 95 or achieves RAM compression ratios of up to five times or higher in a computer using Windows 95;
- C. Such product produces the effect of increasing the RAM available to a computer using Windows 95;
- D. Use of such product in a computer will speed up Windows 95;
- E. Use of such product will permit a Windows 95 user to run larger applications on a computer or to open more applications simultaneously;
- F. Use of such product with 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); or
- G. Microsoft, Inc. has licensed, endorsed, or otherwise approved such product for use with Windows 95.

II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of SoftRAM, SoftRAM⁹⁵, or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the relative or absolute performance, attributes, benefits, or effectiveness of such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product intended to improve the performance of any computer in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, that such product has been authorized, certified, licensed, endorsed, or otherwise approved by any person or organization, unless such representation is true.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product intended to improve the performance of any computer in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the relative or absolute performance, attributes, benefits, or effectiveness of such product, unless, at the time it is made, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

V.

IT IS FURTHER ORDERED that respondents shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and, within ten (10) business days of their receipt of a written request, make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Synchronys Softcorp and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent Synchronys Softcorp and its successors and assigns shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VII.

IT IS FURTHER ORDERED that respondent Synchronys Softcorp and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn less than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondents Rainer Poertner, Daniel G. Taylor, and Wendell Brown, for a period of five (5) years after the date of issuance of this order, shall each notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any company engaged in the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product intended to improve the performance of any computer in or affecting commerce. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

IX.

IT IS FURTHER ORDERED that respondents shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

X.

This order will terminate on October 7, 2016, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: October 7, 1996