

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 Synchronys 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 Synchronys 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 Synchronys 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 Synchronys 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 Synchronys Softcorp.

5. Respondents have manufactured, advertised, labeled, offered for sale, sold, and distributed to the public software products

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

- 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.

SoftRAM⁹⁵

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 SoftRAM⁹⁵. 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."**

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

- A. SoftRAM⁹⁵ increases RAM in a computer using Windows 95 to a greater extent than other software products;
- B. SoftRAM⁹⁵ 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. SoftRAM⁹⁵ 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 SoftRAM⁹⁵ 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 SoftRAM⁹⁵ 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 SoftRAM⁹⁵ 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 SoftRAM⁹⁵ for use with Windows 95.

18. In truth and in fact,

- A. SoftRAM⁹⁵ does not increase RAM in a computer using Windows 95 to a greater extent than other software products;
- B. SoftRAM⁹⁵ 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, SoftRAM⁹⁵ does not increase the RAM available to a computer using Windows 95;

- C. SoftRAM⁹⁵ 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, SoftRAM⁹⁵ does not produce the effect of increasing RAM in a computer using Windows 95;
- D. Use of SoftRAM⁹⁵ 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 SoftRAM⁹⁵ will not speed up Windows 95;
- E. Use of SoftRAM⁹⁵ 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 SoftRAM⁹⁵ will not permit a Windows 95 user to run larger applications or to open more applications simultaneously;
- F. Use of SoftRAM⁹⁵ 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 SoftRAM⁹⁵ 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: