

IN THE MATTER OF

ORCHID TECHNOLOGY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3574. Complaint, May 1, 1995--Decision, May 1, 1995*

This consent order prohibits, among other things, a California-based company from falsely representing that any of its computer peripheral products had been rated, reviewed or endorsed by any person or publication, and from misrepresenting the results of any test, study or evaluation in connection with marketing its computer peripheral equipment. The consent order also requires the respondent to possess competent and reliable evidence to substantiate performance claims.

Appearances

For the Commission: *Matthew D. Gold* and *Jeffrey A. Klurfeld*.

For the respondent: *Timothy Roake, Fenwick & West*, Palo Alto, CA.

COMPLAINT

The Federal Trade Commission, having reason to believe that Orchid Technology, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Orchid Technology is a California corporation, with its principal office or place of business at 45365 Northport Loop West, Fremont, California.

PAR. 2. Respondent has manufactured, labelled, advertised, offered for sale, sold, and distributed peripheral products for personal computers. Among respondent's products is the "Celsius/VLB Windows accelerator" ("Celsius"), which is a graphics accelerator board. A graphics accelerator board increases the speed at which a personal computer displays complex graphical images and improves the quality of the graphics. The Celsius is powered by the AGX015 graphics accelerator chip, which respondent does not manufacture.

Several competitors of Orchid also use the AGX015 graphics accelerator chip to power graphics accelerator boards that they market.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for the Celsius, including but not necessarily limited to the attached Exhibits A-C. These advertisements and promotional materials contain the following statements:

(a) "THE FASTEST WINDOWS ACCELERATOR IN REAL WORLD APPLICATIONS."

Windows Magazine (U.K. Version), August 1993

(Exhibits A-C)

(b) "OUTPERFORMS MANY ACCELERATORS TWICE ITS PRICE."

Windows Magazine (U.K. Version), August 1993

(Exhibits A-C)

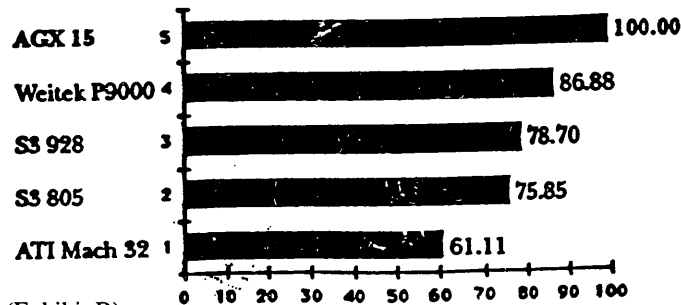
PAR. 5. Through the use of the statements contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A-C, respondent has represented, directly or by implication, that the cited magazine described the Celsius in the manner represented.

PAR. 6. In truth and in fact, the cited magazine did not describe the Celsius in the manner represented. The statement set out in paragraph four (a) did not appear in the cited magazine or elsewhere in reference to the Celsius. The statement set out in paragraph four (b) appeared in the cited magazine but referred to a graphics accelerator board manufactured by one of Orchid's competitors. The Celsius was not even one of the products reviewed in the cited magazine. Therefore, the representation set forth in paragraph five was, and is, false and misleading.

PAR. 7. The advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the attached Exhibits B and C, contain the following statements and depictions:

(a) WINDOWS: Enjoy the speed of the Celsius (AGX 15) with it's 32-bit GUI accelerator chip and VRAM for peak acceleration.

PERFORMANCE: VidMark Scores (Higher number indicates better performance.) VidMark consists of five real world Windows applications including WordPerfect 5.2, Excel 4.0, CorelDraw 3.0, and Freelance 2.0.



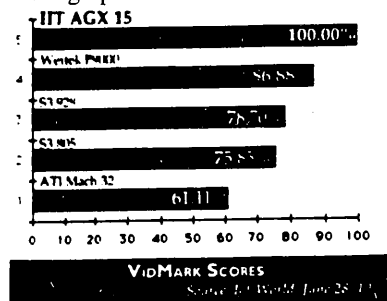
(Exhibit B)

(b) PERFORMANCE

In a recent VidMark performance test, Celsius' chip, the AGX 15, sped to victory in VidMark's latest comparison. VidMark is a benchmark that uses four real world Windows applications including WordPerfect 5.2, Excel 4.0, CorelDraw 3.0, and Freelance 2.0.

BOARD

The Celsius/VLB uses the IIT AGX015 graphics processor (see graph below) and high performance VRAM.



(Exhibit C)

PAR. 8. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph seven, including but not necessarily limited to the attached Exhibits B and C, respondent has represented, directly or by implication, that the Celsius achieved the top score of "100.00" in an objective test comparing several graphics accelerator boards.

PAR. 9. In truth and in fact, the Celsius did not achieve the top score of "100.00" in an objective test comparing several graphics accelerator boards. A competitor's product, which uses the same graphics accelerator chip that is in the Celsius, achieved that score.

Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. In providing the advertisements and promotional materials referred to in paragraph four to computer dealers, respondent has furnished the means and instrumentalities to those dealers to engage in the acts and practices alleged in paragraphs four through nine.

PAR. 11. The acts or practices of respondent 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.

Chairman Pitofsky not participating.

Complaint

EXHIBIT A



Celsius/VLB

GRAPHICS ACCELERATOR

WINDOWS

Enjoy the speed of the Celsius with its 32-bit GUI accelerator chip and VRAM for peak acceleration.

100HZ REFRESH

Create your work on a non-flickering screen in a Windows or AutoCAD environment—the Celsius' refresh rate exceeds VESA standards.

MASTERCAD

Quick and powerful, MasterCAD drivers provide speed, bird's-eye view, 24-bit rendering and more.

16 MILLION COLORS

Enjoy the colors and speed of our 24-bit driver. It's so fast and realistic, it looks like a picture.

MULTIMEDIA

With Orchid's bi-directional feature connector, hardware and drivers, the Celsius provides top notch support for multimedia environments.

PERFORMANCE

In a recent VidMark performance test Celsius sped to victory. VidMark is a benchmark that uses four real world Windows applications which include WordPerfect 5.2, Excel 4.0, CorelDraw 3.0, and Freelance 2.0.

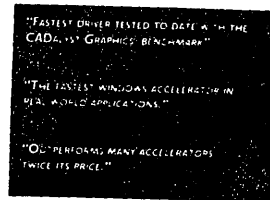


EXHIBIT A
ORCHID



Complaint

119 F.T.C.

EXHIBIT A

Celcius/VLB
 FASTEST WINDOWS ACCELERATOR FOR REAL WORLD APPLICATIONS

BOARD

Celcius/VLB uses the IIT ACX015 graphics processor (see graph below) and high performance VRAM. It ships standard with 1MB of memory and is upgradeable to 2MB. Celcius/VLB requires a 486 VL-Bus System and is backed by a 4-year warranty.



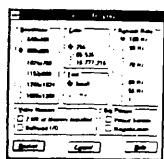

SPECIFICATIONS

ENHANCED WINDOWS DRIVERS
With a maximum of 1600 x 1200 resolution and a color depth of 800 x 600 x 16 million colors, the Celcius/VLB is the choice for the casual and professional user alike.

MULTIMEDIA READY
Celcius/VLB's bi-directional feature connector, hardware and drivers gives you top-of-the-line support for multimedia environments like digital video.

FEATURES

CUSTOM ORCHID DISPLAY SETUP
Orchid's custom display setup allows you to configure your video drivers on the fly. Simply click on the Orchid icon, choose the resolution, colors, font size or refresh rate and you're ready to go!



ADVANCED GRAPHICS INSTRUCTIONS
The Celcius/VLB implements hardware-based graphics instructions for the highest performance possible.

Our Line Draw, BitBlit and Polygon Fill with reference pattern features are the engines powering this card. At 4 operands per instruction the Celcius/VLB displays true color, photo-realistic quality images.

AUTO-CAD DRIVERS
Orchid's MasterCAD Driver, a customized version of the "Aquila Plus," was recently rated by CADalyst as the "fastest driver tested to date" with the CADalyst Graphics Benchmark. Your benefit is increased speed as well as advanced features such as bird's-eye view, real-time panning and zooming, and 24-bit rendering.

TECHNICAL SUPPORT
We offer free technical phone support. Mon - Fri. from 7 a.m. - 5 p.m. PST at (510) 683-0325. Additional software drivers and upgrades can be obtained through the Orchid 24-hour Bulletin Board Service at (510) 683-0325 (1200/2400 BPS), or (510) 683-0555 (9600 BPS).

FULL DRIVER SUPPORT
The Celcius/VLB is supported by hundreds of applications right out of the box using VESA, VGA and other high quality drivers, such as the following:

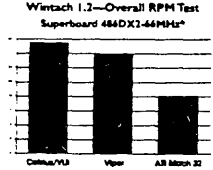
- ▲ AutoCAD ▲ WordPerfect
- ▲ AutoShade ▲ 3D Studio
- ▲ Windows 3.x ▲ MicroStation
- ▲ OS/2 2.1

COMPATIBLE MONITORS
The Celcius/VLB is compatible with multi-frequency analog monitors, the IBM 8513, the IBM 8514 Display and compatibles.

EXTRAS

- ▲ Our Automatic Network Installer allows a single installation to the server which updates all Orchid card drivers without affecting other cards.
- ▲ VESA BIOS 1.2 compliant
- ▲ Requires 386/486 VL-Bus system or Pentium

Winbench 1.2—Overall RPM Test
Superboard 486DX2-66MHz*



RESOLUTION, COLORS AND VERTICAL REFRESH RATE SUPPORT			
Resolution	Minimum Memory Configuration	Maximum Colors	Vertical Refresh
1280 x 1024	1 MB	16	45, 56, 70*
1152 x 900	1 MB	16	45, 56, 90*
1024 x 768	1 MB	256	45, 60, 70, 76
800 x 600	1 MB	256	56, 60, 70, 90, 100*
800 x 600	1 MB	65,536	56, 60, 65, 90*
640 x 480	1 MB	256	60, 70, 90, 100*
640 x 480	1 MB	65,536	60, 70, 90, 100*
640 x 480	1 MB	16.8 million	60, 70, 100*
1600 x 1200*	2 MB	16	45, 70
1280 x 1024	2 MB	256	45, 56
1024 x 768	2 MB	65,536	45
800 x 600*	2 MB	16.8 million	60, 70*

* New Feature

HEADQUARTERS
Orchid Technology
45365 Northport Loop West
Fremont, CA 94538
Tel: (510) 683-0300
800-7-ORCHID

Orchid France S.A.R.L.
Colombes, France
Tel: (33)-1-47 80 70 50

Orchid Technology GmbH
Muenster, Germany
Tel: 49 2131 80071

Orchid (Europe) Ltd.
Basingstoke, UK
Tel: (0256) 478898

A-2

Celcius/VLB (11-91) © 1991 Orchid Technology. VLB, OrchidCAD and Orchid are trademarks of Orchid Technology. All other products are trademarks of their respective manufacturers. Features and specifications are subject to change without notice.

EXHIBIT B

CELSIUS / VLB

Graphics Accelerator



"The Fastest Windows Accelerator in Real World Applications."
Windows Magazine (U.K. Version) August 1993

"Out performs many accelerators twice it's price."
Windows Magazine (U.K. Version) August 1993

WINDOWS: Enjoy the speed of the Celsius (AGX 15) with it's 32-bit GUI accelerator chip and VRAM for peak acceleration.

90Hz REFRESH: View a non-flickering screen in Windows or AutoCAD, higher than VESA standards. It's incredible!

MASTERCAD: Quick and powerful, MasterCAD drivers will give you speed, bird's eye view, 24-bit regen and more.

16 MILLION COLORS: Enjoy the colors and the speed of our 24 bit driver. It's fast and so realistic, it looks like a picture.

MULTIMEDIA: Our bi-directional feature connector, hardware engine and drivers are compatible with Video for Windows and other multimedia products.

PERFORMANCE: VidMark Scores (Higher number indicates better performance.) VidMark consists of five real world Windows applications including WordPerfect 5.2, Excel 4.0, CorelDraw 3.0, and Freelance 2.0.

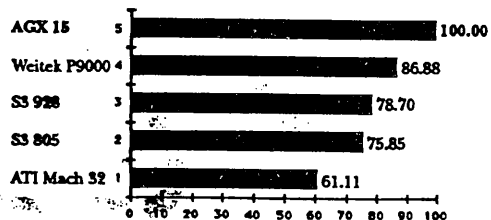


EXHIBIT B

EXHIBIT B

Celsius/VLB Technical Specifications

"The Best Price/Performance VRAM based board in the World."

The Celsius/VLB uses the IIT ACX015 graphics processor and high performance VRAM. It ships standard with 1MB of memory and is upgradeable to 2MB.

Enhanced Graphics Instructions
The Celsius/VLB implements hardware-based graphics instructions for the highest performance possible.

► Line Draw, BitBlt and Polygon Fill with reference pattern is what makes this card so fast. Also, with an incredible 4 operands per instruction, our Celsius displays fast true color photo-realistic quality images.

Full Driver Support

The Celsius/VLB is supported by hundreds of applications right out of the box using VESA, VGA and other high quality drivers, such as the following:

- AutoCAD
- WordPerfect
- AutoShade
- 3D Studio
- Windows 3.x
- MicroStation

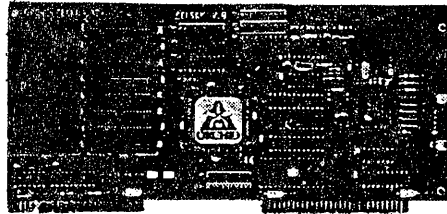
Enhanced Windows Drivers

► With a maximum of 1600x1200 resolution and a color depth of 800x600x16 million colors, the Celsius is the choice for the casual and professional alike.

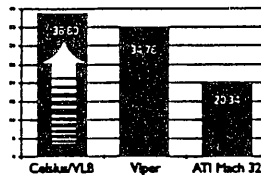
► Automatic Network Installation

Multimedia Ready

The Celsius has a bi-directional Feature Connector that is compatible with Video For Windows and many other popular multimedia products.



Winbench 1.2—Overall RPM Test
Superboard 486DX2-66MHz*



AutoCAD Drivers

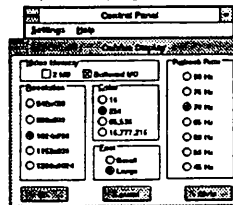
► Orchid's MasterCAD Driver delivers incredible speed plus advanced features such as bird's eye view, real-time zooming, 24-bit regen and more!

Additional Information

- Compatible with multi-frequency analog monitors, single-frequency analog (e.g. IBM 8515), IBM 8514 Display or compatibles.
- Four year warranty
- VESA BIOS 1.2
- Requires 486 VL-Bus system

Custom Orchid Display Setup

► Orchid's custom display setup allows you to configure your video drivers "on the fly." Just click on the Orchid icon, choose the resolution, colors, font size or refresh rate and you're ready to go!



Technical Support

Free technical phone support is available Monday-Friday from 7 a.m. - 5 p.m. Pacific Standard Time. Additional software drivers and upgrades can be obtained through the Orchid 24-hour Bulletin Board Service at (510) 683-0327 (1200/2400 BPS), or (510) 683-0555 (9600 BPS).

Resolution, Colors and Vertical Refresh Rate Support

Resolution	Minimum Memory Configuration	Maximum Colors	Vertical Refresh
1280 x 1024	1 MB	16	45, 56
1152 x 900	1 MB	16	45, 56
1024 x 768	1 MB	256	45, 60, 70, 76
800 x 600	1 MB	256	56, 60, 70, 90*
800 x 600	1 MB	65,536	56, 60, 65
640 x 480	1 MB	65,536	60, 70, 90*
640 x 480	1 MB	16.8 million	60, 70
1600 x 1200*	2 MB	16	45
1280 x 1024	2 MB	256	45, 56
1024 x 768	2 MB	65,536	45
800 x 600*	2 MB	16.8 million	60

* New Features



Headquarters
Orchid Technology
45385 Northport Lane West
Palo Alto, CA 94308
Tel: (510) 683-0300
Fax: (510) 490-8312

Orchid France S.A.R.L.
14 A 30 rue de Mandes
92700 Colombes
France
Tel: (33) 1-47 80 70 50
Fax: (33) 1-47 82 51 79



Orchid Technology GmbH
Musterfelder Str. 36
4005 Meerbusch 1
Germany
Tel: 49 2132 80071
Fax: 49 2132 80074

Orchid (Europe) Ltd.
Unit 5, Canal Business Centre
Soudley Road, Basingstoke
Hants RG24 0UG, UK
Tel: 02564 479888
Fax: 02564 64222

Celsius/VLB/VESA. ©1991 Celsius, OrchidCAD, and Orchid are trademarks of Orchid Technology. All other products are trademarks of their respective manufacturers. Technical specifications and other information on this document subject to change without notice. *System used for benchmark comparison: Orchid Superboard 486DX2-66VLB superboard, 16M x 768 x 256 colors at 70 Hz refresh.



Celsius

WINDOWS ACCELERATOR

WINDOWS

Enjoy the speed of the Celsius (AGX 15) with its 32-bit GUI accelerator chip and VRAM for peak acceleration.

90Hz REFRESH

Create your work on a non-flickering screen in a Windows or AutoCAD environment—the Celsius' refresh rate exceeds VESA standards.

MASTERCAD

Quick and powerful, MasterCAD drivers provide speed, bird's-eye view, 24-bit rendering and more.

16 MILLION COLORS

Enjoy the colors and speed of our 24-bit driver. It's so fast and realistic, it looks like a picture.

MULTIMEDIA

With Orchid's bi-directional feature connector, hardware and drivers, the Celsius provides top notch support for multimedia environments.

PERFORMANCE

In a recent VidMark performance test, Celsius' chip, the AGX 15, sped to victory in VidMark's latest comparison. VidMark is a benchmark that uses four real world Windows applications including WordPerfect 5.2, Excel 4.0, CorelDraw 3.0, and Freelance 2.0.

"FASTEST DRIVER TESTED TO DATE WITH THE CADALYST GRAPHICS BENCHMARK"

"THE FASTEST WINDOWS ACCELERATOR IN REAL WORLD APPLICATIONS."

"OUTPERFORMS MANY ACCELERATORS TWICE ITS PRICE."

EXHIBIT C

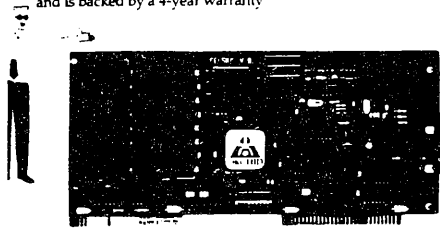


EXHIBIT C

Celsius/VLB WINDOWS ACCELERATOR

BOARD

The Celsius/VLB uses the IIT AGX015 graphics processor (see graph below) and high performance VRAM. It ships standard with 1MB of memory and is upgradeable to 2MB. Celsius requires a 486 VL-Bus System and is backed by a 4-year warranty.

**ADVANCED GRAPHICS INSTRUCTIONS**

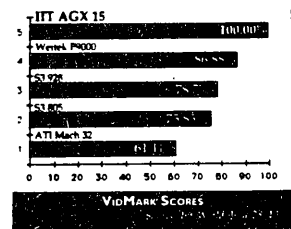
The Celsius/VLB implements hardware-based graphics instructions for the highest performance possible.

Our Line Draw, BitBlt and Polygon Fill with reference pattern features are the engines powering this card. At 4 operands per instruction the Celsius displays true color, photo-realistic quality images—FAST.

FULL DRIVER SUPPORT

The Celsius/VLB is supported by hundreds of applications right out of the box using VESA, VGA and other high quality drivers, such as the following:

- ▲ AutoCAD ▲ WordPerfect
- ▲ AutoShade ▲ 3D Studio
- ▲ Windows 3.x ▲ MicroStation

**SPECIFICATIONS****ENHANCED WINDOWS DRIVERS**

With a maximum of 1600 x 1200 resolution and a color depth of 800 x 600 x 16 million colors, the Celsius is the choice for the casual and professional user alike.

MULTIMEDIA READY

Celsius' bi-directional feature connector, hardware and drivers gives you top-of-the-line support for multimedia environments like digital video.

AUTOCAD DRIVERS

Orchid's MasterCAD Driver, also known as the Aquila Extra, was recently rated by CADalyst, as the "fastest driver tested to date with the CADalyst Graphics Benchmark."

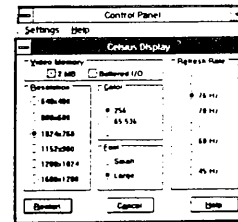
Your benefit is increased speed as well as advanced features such as bird's-eye view, real-time panning and zooming, and 24-bit rendering.

COMPATIBLE MONITORS

The Celsius is compatible with multi-frequency analog monitors, the IBM 8513, the IBM 8514 Display and compatibles.

FEATURES**CUSTOM ORCHID DISPLAY SETUP**

Orchid's custom display setup allows you to configure your video drivers "on the fly." Simply click on the Orchid icon, choose the resolution, colors, font size or refresh rate and you're ready to go!

**TECHNICAL SUPPORT**

We offer free technical phone support Mon.-Fri. from 7 a.m. - 5 p.m. PST at (510) 683-0323. Additional software drivers and upgrades can be obtained through the Orchid 24-hour Bulletin Board Service at (510) 683-0327 (1200/2400 BPS), or (510) 683-0555 (9600 BPS).

EXTRAS

- ▲ Our Automatic Network Installation puts you on the network in no time
- ▲ VESA BIOS 1.2
- ▲ Requires 486 VL-Bus system

RESOLUTION, COLORS AND VERTICAL REFRESH RATE SUPPORT

RESOLUTION	MINIMUM MEMORY CONFIGURATION	MAXIMUM COLORS	VERTICAL REFRESH
1280 x 1024	1 MB	16	45, 56
1152 x 900	1 MB	16	45, 56
1024 x 768	1 MB	256	45, 60, 70, 76
800 x 600	1 MB	256	56, 60, 70, 90*
800 x 600	1 MB	65,536	56, 60, 65
640 x 480	1 MB	65,536	60, 70, 90*
640 x 480	1 MB	16.8 million	60, 70
1600 x 1200*	2 MB	16	45
1280 x 1024	2 MB	256	45, 56
1024 x 768	2 MB	65,536	45
800 x 600*	2 MB	16.8 million	60

* New Features

C-2

HEADQUARTERS
Orchid Technology
45365 Northport Loop West
Fremont, CA 94538
Tel: (510) 683-0300
800-7-ORCHID
Fax: (510) 490-9312

Orchid France S.A.R.L.
14 & 30 rue de Mantes
92700 Colombes
France
Tél: (33)-1-47 80 70 50
Fax: (33)-1-47 82 51 79

Orchid Technology GmbH
Niederlöncker Str. 36
40667 Meerbusch
Germany
Tel: 49 2132 80071
Fax: 49 2132 80074

Orchid (Europe) Ltd.
Unit 5, Cartel Business Centre
Stroudley Road, Basingstoke
Hants RG24 0UG, UK
Tel: (0256) 479898
Fax: (0256) 64222



Celsius VLB 100/151 ©1991 Orchid. AutoCAD and Orchid are trademarks of Orchid Technology. All other products are trademarks of their respective manufacturers. Technical specifications and other information on this document subject to change without notice.

DECISION AND ORDER

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

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent 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 respondent 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 respondent has 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 Orchid Technology is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located in the City of Fremont, State of California.

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

ORDER

DEFINITION

For purposes of this order, the term "*computer peripheral equipment*" shall mean graphics cards, sound cards, adaptor cards, memory expansion cards, or other hardware products that enhance the capability and performance of personal computers.

I.

It is ordered, That respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such product has been rated, endorsed, recommended, reviewed or evaluated by any person or publication, unless such is the case.

II.

It is further ordered, That respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test or study.

III.

It is further ordered, That respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the performance or attributes of any 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 such representation. For purposes of this provision, "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.

IV.

It is further ordered, That for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

VI.

It is further ordered, That respondent shall, within ten (10) days from the date of service of this order upon it, distribute a copy of this order to each of its officers, agents, licensees, representatives, independent contractors, and employees involved in the preparation and placement of advertisements or promotional materials, or who is in communication with customers or prospective customers, or who has any responsibilities with respect to the subject matter of this order.

VII.

It is further ordered, That respondent shall, within sixty (60) days from the date of service of this order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Chairman Pitofsky not participating.

IN THE MATTER OF

TELE-COMMUNICATIONS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3575. Complaint, May 3, 1995--Decision, May 3, 1995*

This consent order permits, among other things, Tele-Communications, Inc. ("TCI") to complete its acquisition of TeleCable, on the condition that it divest either its own Columbus cable TV assets, or those of TeleCable, within twelve months. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to complete a sale of one of the systems. In addition, TCI, for ten years, is required to obtain Commission approval before acquiring any cable TV system in the Columbus, GA., area.

Appearances

For the Commission: *Ronald B. Rowe and Jill M. Frumin.*

For the respondent: *Joe Sims, Jones, Day, Reavis & Pogue,*
Washington, D.C.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Tele-Communications, Inc. ("TCI"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire TeleCable Corporation ("TeleCable") in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. TCI

PARAGRAPH 1. Respondent TCI is a corporation organized, existing, and doing business under and by virtue of the laws of the