

Complaint

122 F.T.C.

IN THE MATTER OF

SYNCRONYS SOFTCORP, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3688. Complaint, Oct. 7, 1996--Decision, Oct. 7, 1996*

This consent order prohibits, among other things, the California-based computer software manufacturer and three of its officers from making performance claims regarding their software programs or any substantially similar product unless the claims are true and substantiated. The consent order also prohibits the respondents from making any claims that a product intended to improve computer performance is licensed, endorsed, authorized, or certified by any person or organization, unless those claims are true.

Appearances

For the Commission: *Robin Eichen, Douglas Goglia and Julie Gearty.*

For the respondents: *Harvey Saferstein, Chadbourne & Parke, New York, N.Y.*

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.

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 intended to improve the performance of personal computers, including "SoftRAM" and "SoftRAM⁹⁵."

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.

BACKGROUND

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 "SoftRAM⁹⁵," 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 SoftRAM⁹⁵ for that purpose.

SOFTRAM

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).

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 twelve, 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 twelve, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph thirteen, 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 thirteen, at the time the representations were made. Therefore, the representation set forth in paragraph fourteen 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." (Emphasis in original; Exhibit 2).

B. "Why risk the technical nightmare and expense of adding hard RAM? Just click on SoftRAM⁹⁵, 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 SoftRAM⁹⁵ 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 SoftRAM⁹⁵. 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. "SoftRAM⁹⁵'s Patent Pending RAM compression technology takes your Windows memory and at least doubles it. In fact, SoftRAM⁹⁵ now achieves RAM compression ratios of up to 5x and higher." (Emphasis in original; Exhibit 4).

17. Through the means described in paragraph sixteen, 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 seventeen, to the extent applicable to Windows 95, were, and are, false or misleading.

19. Through the means described in paragraph sixteen, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph seventeen, 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 seventeen, subparagraphs A through F, at the time the representations were made. Therefore, the representation set forth in paragraph nineteen was, and is, false or misleading.

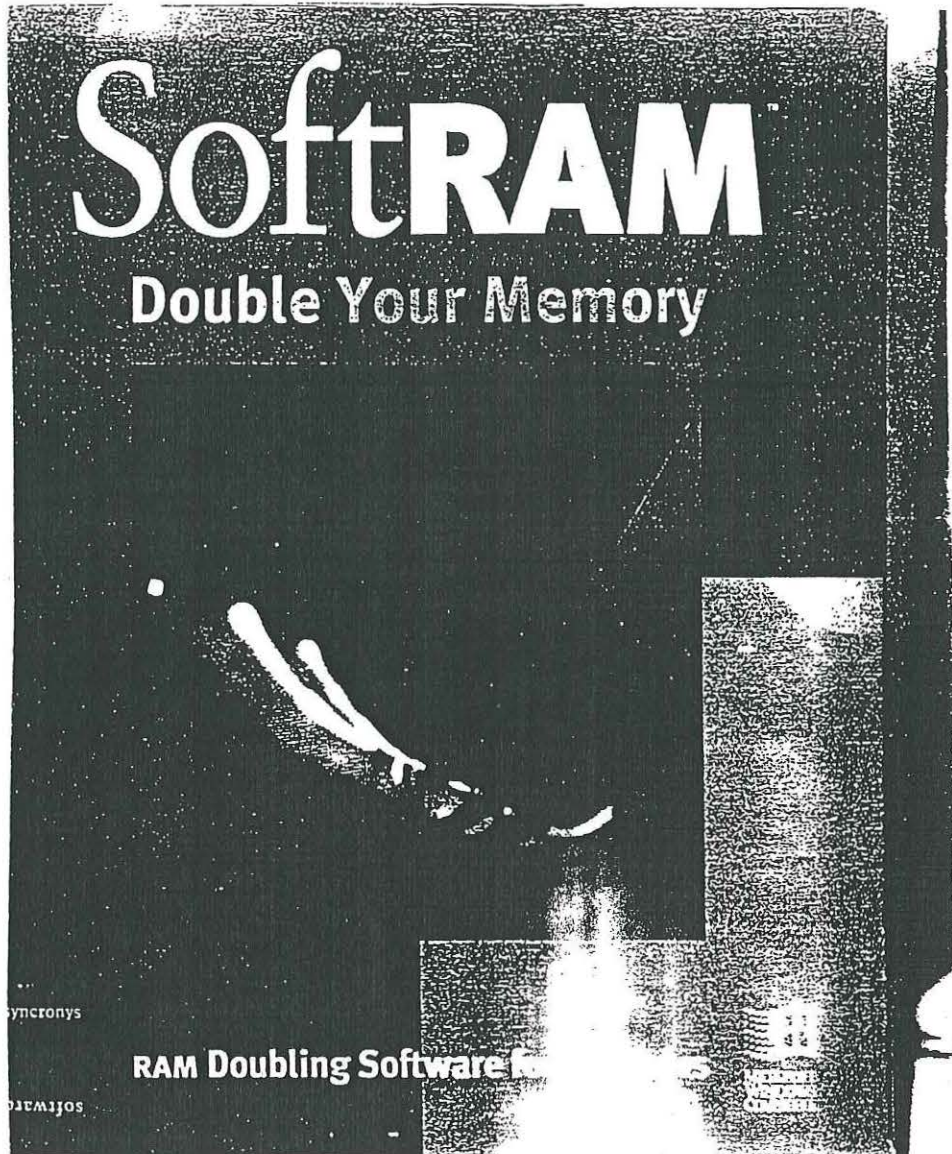
21. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT 1

EXHIBIT 1



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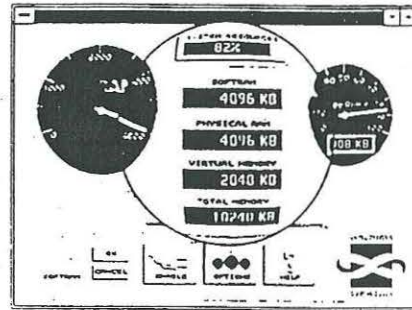
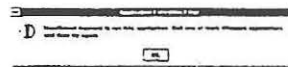
EXHIBIT 1

SoftRAM

RAM Doubling Software for Windows

Double Your Memory seamlessly with SoftRAM. Eliminate the expense and hassle of opening your PC to install hard RAM.

Imagine: 4MB becomes 8
8 becomes 16... You become doubly
productive. Open more applications
simultaneously and say good-bye to



SoftRAM's Patented Technologies take your Windows memory and effectively double it. And SoftRAM's unique RAM Analyst dynamically reviews the memory requirements of all of your applications and pre-calculates the most efficient compression method for each RAM page of memory. All of this is tracked and continuously updated in a knowledge database to optimize performance on the applications you use.

- Avoid the expense & hassle of hard RAM
- One-click, one-time installation
- Automatic, transparent & user configurable
- Works with all 386 & higher desktops & laptops
- Use with as little as 4MB
- Works with Windows 3.0 & higher
- Free Update to SoftRAM for Windows 95
- Compatible with all Windows applications
- Ideal for graphics programs & large data files



3750 Ince Boulevard
Culver City, CA 90232

☎ 310 562 9203 FAX 310 562 9034

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EXHIBIT 1



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EXHIBIT 1



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EXHIBIT 1



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EXHIBIT 1



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EXHIBIT 2

EXHIBIT 2

ANNOUNCING THE ONLY DISK THAT DOUBLES YOUR MEMORY FOR WINDOWS 95.



■ Why risk the technical nightmare and expense of adding hard RAM? Just click on SoftRAM™ the only software to instantly speed up Windows 95 and Windows 90 and higher. Run multimedia and RAM hungry applications. Open more applications simultaneously. 4MB becomes at least 8MB. 8MB becomes at least 16MB. (In fact, you can get up to 5 times more memory.) Works with all 386 and higher desktops and laptops. Good-bye "Out-of-Memory." Hello, SoftRAM.



SoftRAM™ is now at resellers everywhere or direct from 1-800-691-7281.



Don't Run Windows Without It.

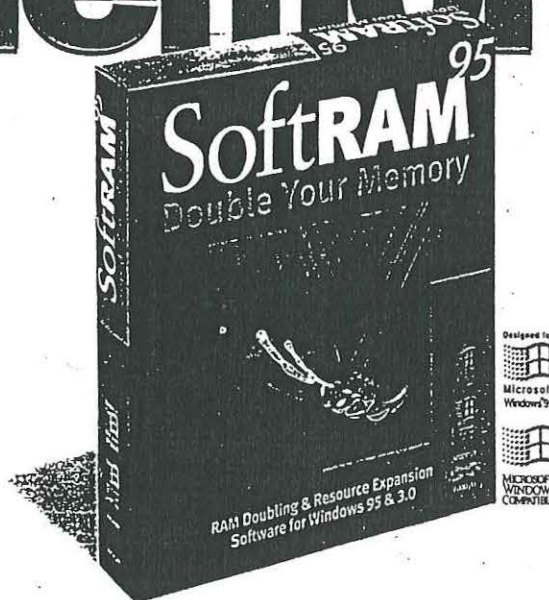
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EXHIBIT 3

EXHIBIT 3

double click. double memory.



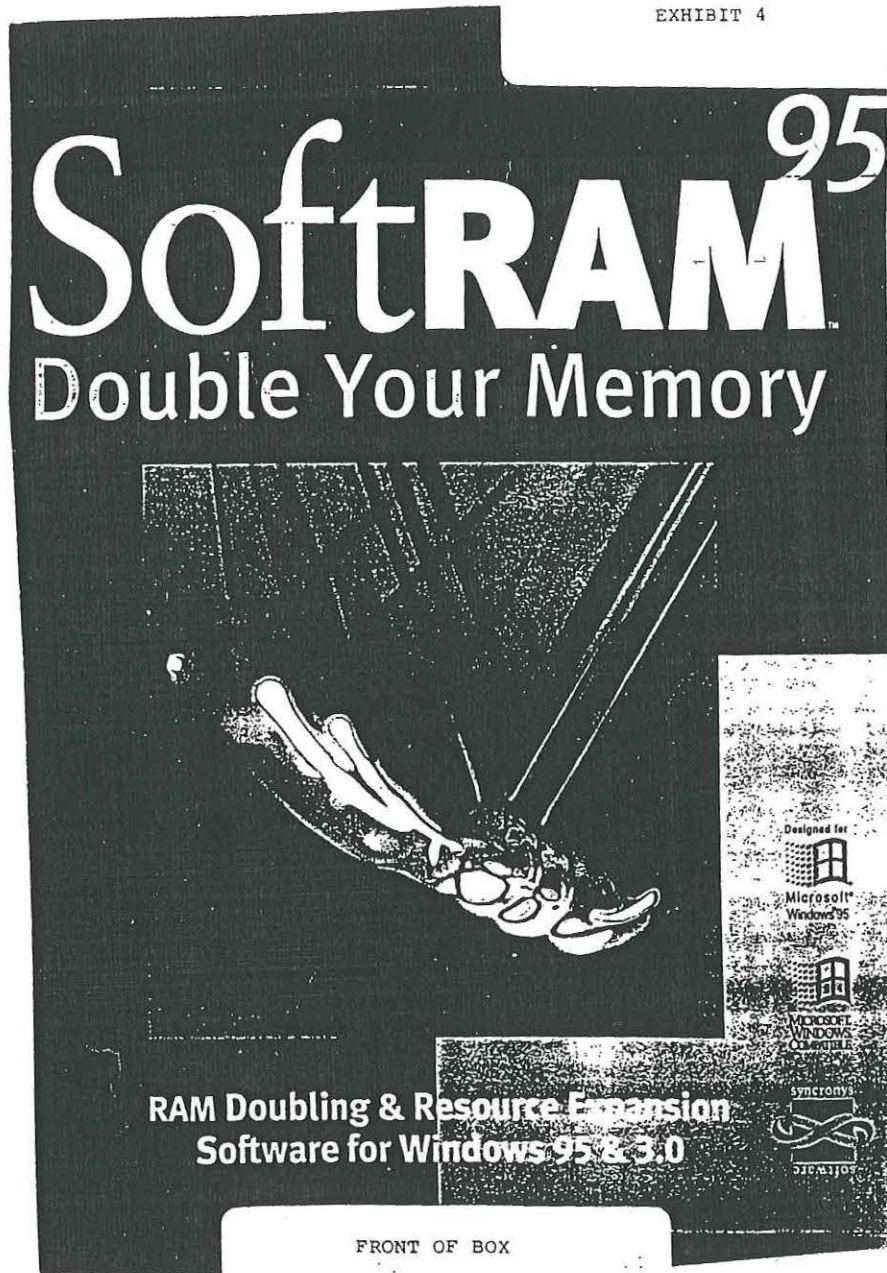
■ Doubling RAM doesn't have to be hard. Install SoftRAM™ and instantly speed up Windows 95 and Windows 3.0 and higher. Run multimedia and RAM hungry applications. Open more applications simultaneously. Say good-bye to "Out-of-Memory" messages. 4MB becomes at least 8MB. 8MB becomes at least 16MB. Get the idea? (In fact, you can get up to 5 times more memory.) SoftRAM™ works with all 386 and higher desktops and laptops. PC Novice calls SoftRAM the "real RAM doubler for Windows." Executive Summary: Don't Run Windows Without It.

SoftRAM™ is now at resellers everywhere or direct from 1-800-691-7781.

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Circle 215 on reader service card





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EXHIBIT 4

SoftRAM⁹⁵

RAM Doubling & Resource Expansion Software

Double Your Memory

and expand your System Resources seamlessly with SoftRAM™. Eliminate the expense and hassle of opening your PC to install HardRAM chips. SoftRAM™ installs in seconds and is compatible with Windows 95, Windows 3.0 & higher and all Windows applications.

Imagine: 4MB becomes 8MB

8MB becomes 16MB... You become doubly productive. Install SoftRAM™ and instantly speed up Windows, run larger applications and open more applications simultaneously. Say good-bye to 'Out-of-Memory' messages.

SoftRAM™'s Patent Pending

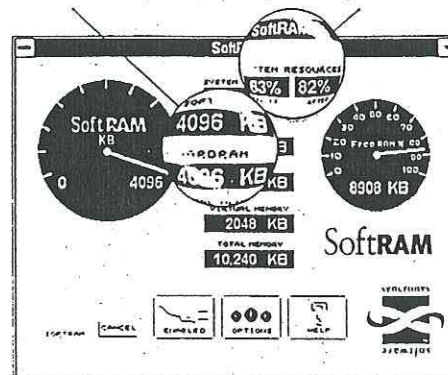
RAM compression technology takes your Windows memory and at least doubles it. In fact, SoftRAM™ now achieves RAM compression ratios of up to 5x and higher. And SoftRAM™ expands System Resource space under Windows 3.0 so you can load and run more applications and take full advantage of Windows' powerful multi-tasking. SoftRAM™ even clears Windows 3.0 'critical' memory bottlenecks under 1MB - the space used, often wastefully, by system software and device drivers. SoftRAM™ configures automatically to both your PC and to you. Our unique RAM Analyst™ dynamically tracks and records the memory requirements of the applications you use and optimizes performance based on your patterns of usage.



Synchrony Software
3760 Ince Boulevard
Culver City, CA 90232
NASDAQ: SYCR

Double Your Memory

Expand Your System Resources



- Avoid the expense & hassle of installing HardRAM
- Works with WIN 95 and WIN 3.0 & higher
- Installs in seconds - safe, tested & guaranteed
- Automatic, transparent & user configurable
- Works with all 386 & higher desktops & laptops
- Use with as little as 4MB HardRAM
- Compatible with all Windows applications
- Ideal for Multi-media & RAM hungry programs

Don't Run Windows Without It!

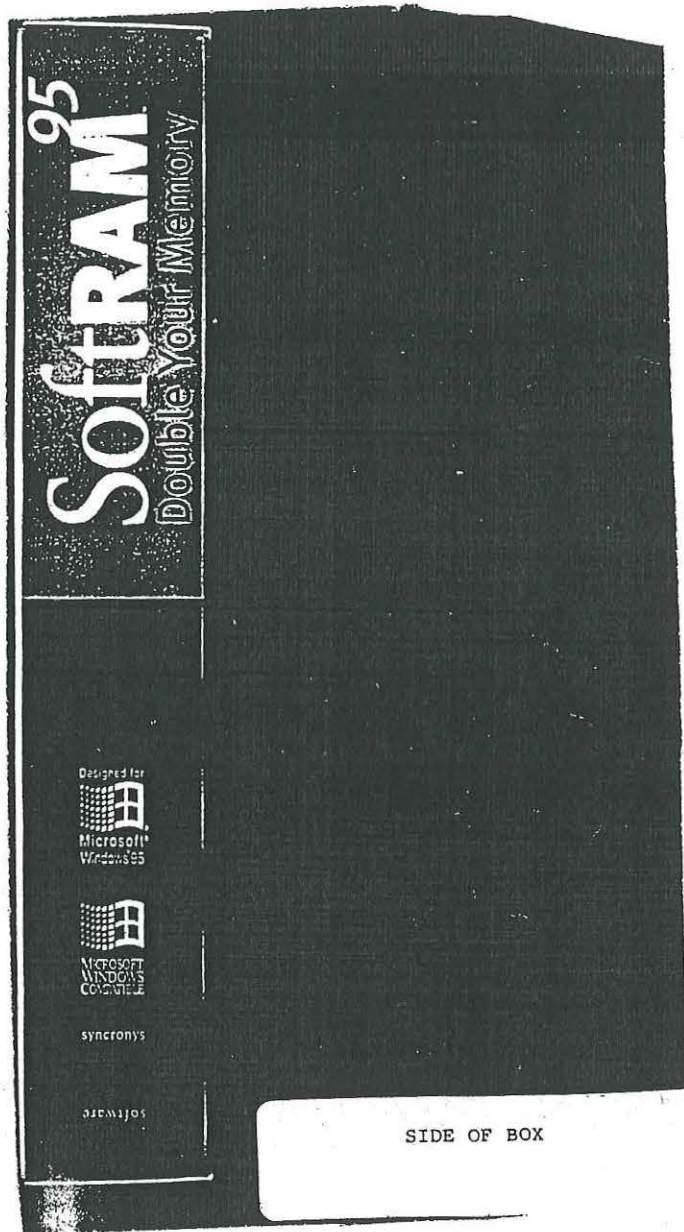
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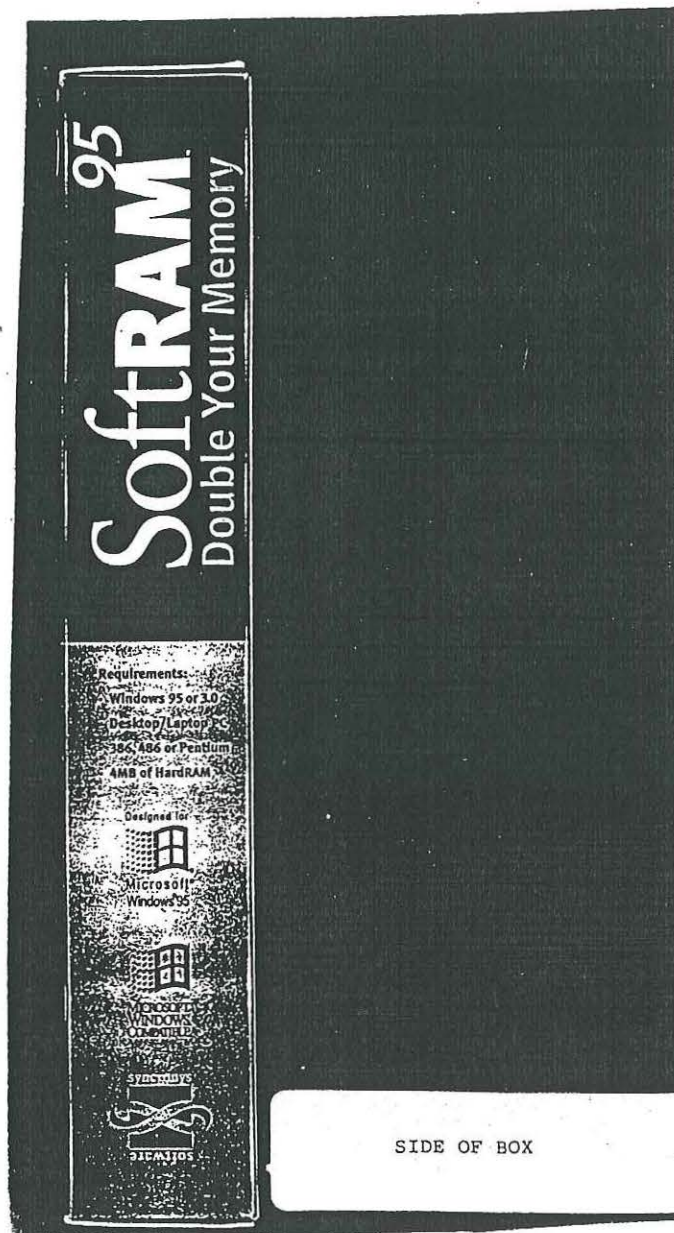
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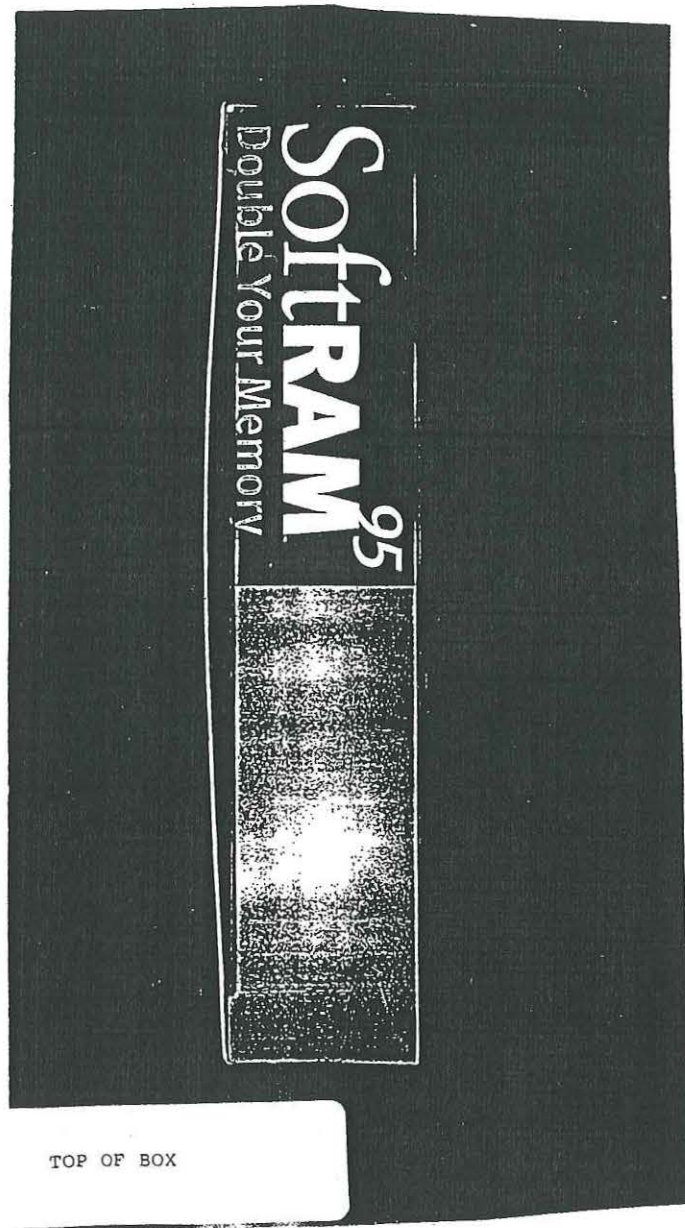
EXHIBIT 4



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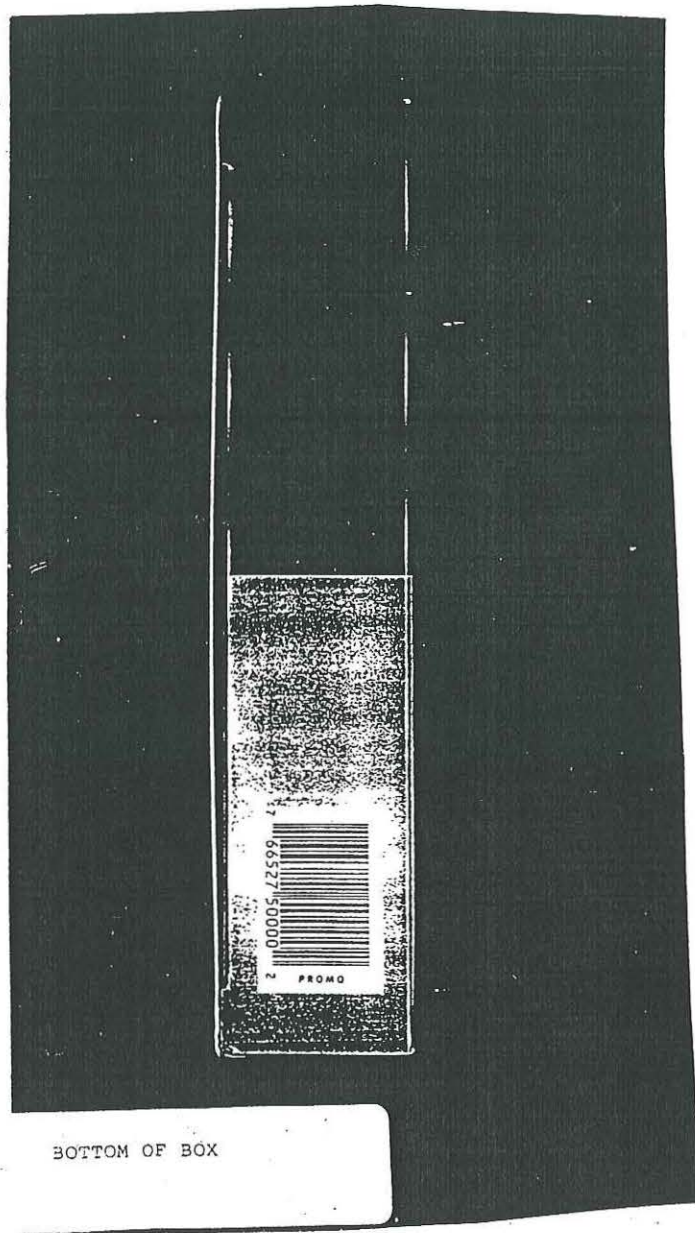
EXHIBIT 4



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EXHIBIT 4



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DECISION AND ORDER

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.

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.

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.

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.

Complaint

122 F.T.C.

IN THE MATTER OF

FRESENIUS AG, ET AL.

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-3689. Complaint, Oct. 15, 1996--Decision, Oct. 15, 1996

This consent order requires, among other things, the California-based subsidiary of Fresenius AG to divest its Lewisberry, Pennsylvania hemodialysis concentrate production facility to Di-Chem, Inc., of Maple Grove, Minnesota, or to another Commission-approved acquirer, if the Di-Chem deal falls through.

Appearances

For the Commission: *Howard Morse, Steven Wilensky and William Baer.*

For the respondents: *David Beddow and Richard Parker, O'Melveny & Myers, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and of the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Fresenius AG, the parent company of Fresenius USA, Inc. (collectively "Fresenius"), has entered into an Agreement and Plan of Reorganization with W.R. Grace & Co. ("Grace") whereby Fresenius will acquire from Grace the businesses comprising National Medical Care, Inc. ("NMC"), and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and having reason to believe that Fresenius has entered into such agreement in restraint of trade in violation of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint stating its charges as follows: