

Watertown, Connecticut; (11) its supermarket located at 266 East Main Street, Clinton, Connecticut; (12) its supermarket located 60 Cantor Drive, Willimantic, Connecticut; (13) its supermarket located at 245 Kane Street, West Hartford, Connecticut; and (14) its supermarket located at 976 North Colony Road, Wallingford, Connecticut. Shaw's Supermarkets, Inc., is a corporation with headquarters at 140 Laurel Street, East Bridgewater, Massachusetts.

Under the terms of the proposed order, Ahold must also divest to Big Y Foods, Inc. (1) its supermarket located at 830 Boston Post Road, Guilford, Connecticut; (2) its supermarket located at 650 Memorial Drive, Chicopee, Massachusetts; (3) its supermarket located at West Main Route 44, Avon, Connecticut; (4) its supermarket located at 3 Kent Road, New Milford, Connecticut; and (5) its supermarket located at 265 Ellington Road, East Hartford, Connecticut. Big Y Foods, Inc., is a corporation with headquarters at 280 Chestnut Street, Springfield, Massachusetts.

The purpose of the divestitures to these purchasers is to ensure the continuation of the Assets to be Divested as ongoing viable enterprises engaged in the supermarket business and to remedy any lessening of competition resulting from the acquisition as alleged in the Commission's complaint.

Star, Bozzuto's, Shaw's, and Big Y already own and operate supermarkets. The management of each company has substantial experience in the supermarket business. Star and Bozzuto's do not operate supermarkets in the areas where the stores they are buying are located. Big Y and Shaw's operate, or will shortly, in a few of the markets where they are buying divested supermarkets. In these markets, however, Big Y and Shaw's are not now significant competitors, and the additional stores will make them more competitive against the combined Ahold/Stop & Shop.

Under the terms of the proposed order, Ahold must divest the assets to be divested within thirty (30) days after the proposed Order is made final by the Commission. Because the proposed order contemplates divestiture within 30 days to purchasers that have already been identified to the Commission, and because the proposed order includes a strong trustee provision and an Asset Maintenance Agreement, the Commission has not required a hold separate agreement in this case. Under the proposed order, if any of the divestitures are not accomplished within 30 days after the order is made final, then the Commission may appoint a trustee to divest the remaining assets. The trustee may, on his or her own initiative or at the direction of the Commission (and subject to Commission approval after a 30-day public comment period), add or substitute supermarkets in the overlap areas listed in the order so as to accomplish the required divestitures. This provision is important to insure that the divestitures will be made. Ahold is unlikely to permit the deterioration of any of the supermarkets to be divested, because to do so could ultimately invite a divestiture trustee to make a substitution, leaving Ahold with a store that had been allowed to deteriorate.

The fact that the trustee provision can be invoked quickly, *i.e.*, within 30 days, also gives Ahold an incentive to complete the divestitures in a timely manner.

The purpose of this analysis is to invite public comment concerning the proposed order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Secretary.

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[File No. 962-3002]

**Synchronys Softcorp; Rainer Poertner; Daniel G. Taylor; Wendell Brown; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Culver City, California-based computer software manufacturer and three of its officers from making performance claims about their SoftRAM and SoftRAM<sup>95</sup> software programs or about any substantially similar product unless the claims were true and substantiated. The respondents are also prohibited from making any claims that a product intended to improve computer performance had been licensed, endorsed, authorized, or certified by any person or organization unless those claims were true. The consent agreement settles allegations that the respondents misrepresented and/or failed to substantiate the performance of these two products, which were advertised and promoted for their purported ability to improve the performance of personal computers using Microsoft, Inc.'s Windows and Windows 95 programs.

**DATES:** Comments must be received on or before September 23, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Michael Bloom, Federal Trade Commission, New York Regional Office, 150 William Street, Suite 1300, New York, NY 10038. (212) 264-1201.  
Robin Eichen, Federal Trade Commission, New York Regional

Office, 150 William Street, Suite 1300, New York, NY 10038. (212) 264-1250.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order**

The Federal Trade Commission has conducted an investigation of certain acts and practices of Synchronys Softcorp, a corporation, Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the draft complaint. Therefore,

*It is hereby agreed by and between* Synchronys Softcorp, by its duly authorized officers, and Rainer Poertner, Daniel G. Taylor, and Wendell Brown, individually and as officers of the corporation, and counsel for the Federal Trade Commission that:

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

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

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

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

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the

decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

#### 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 SoftRAM<sup>95</sup> 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, SoftRAM<sup>95</sup>, 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 twenty (20) years from the date of its issuance, 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.

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Synchronys Softcorp, Rainer Poertner, Daniel G. Taylor, and Wendell Brown. The proposed respondents are marketers of computer

software products, including SoftRAM and SoftRAM<sup>95</sup>.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents made the following unsubstantiated representations about SoftRAM: (1) SoftRAM uses compression technology to double the random access memory ("RAM") available to a computer using any of Microsoft, Inc.'s Windows 3.0, 3.1, or 3.11 operating systems (collectively "Windows 3.x"); (2) SoftRAM produces the effect of doubling RAM in a computer using Windows 3.x; (3) use of SoftRAM will permit a Windows 3.x user to open more applications simultaneously on a computer; and (4) use of SoftRAM in a computer using Windows 3.x will substantially reduce or eliminate the occurrence of computer screen messages that indicate insufficient memory.

With respect to SoftRAM<sup>95</sup>, the complaint charges that the proposed respondents made the following unsubstantiated representations: (1) SoftRAM<sup>95</sup> increases RAM in a computer using Microsoft, Inc.'s Windows 95 operating system ("Windows 95") to a greater extent than other software products; (2) SoftRAM<sup>95</sup> 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; (3) SoftRAM<sup>95</sup> produces the effect of at least doubling RAM in a computer using Windows 3.x or Windows 95; (4) use of SoftRAM<sup>95</sup> in a computer will speed up Windows 3.x or Windows 95; (5) use of SoftRAM<sup>95</sup> will permit a Windows 3.x or Windows 95 user to run larger applications on a computer, and to open more applications simultaneously; and (6) use of SoftRAM<sup>95</sup> 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 insufficient memory. The complaint also charges that claims (1) through (6) are false to the extent that they apply to use of SoftRAM<sup>95</sup> with Windows 95. Further, the complaint charges that the proposed

respondents have falsely represented that Microsoft, Inc. has licensed, endorsed, or otherwise approved SoftRAM<sup>95</sup> for use with Windows 95.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Part I of the proposed order, in connection with SoftRAM<sup>95</sup> or any substantially similar product, prohibits the proposed respondents from misrepresenting that: (1) such product increases RAM in a computer using Windows 95 to a greater extent than other software products; (2) 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; (3) such product produces the effect of increasing the RAM available to a computer using Windows 95; (4) use of such product in a computer will speed up Windows 95; (5) use of such product will permit a Windows 95 user to run larger applications on a computer or to open more applications simultaneously; (6) 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 (7) Microsoft, Inc. has licensed, endorsed, or otherwise approved such product for use with Windows 95.

Part II of the proposed order prohibits any representation which relates to the relative or absolute performance, attributes, benefits, or effectiveness of SoftRAM, SoftRAM<sup>95</sup>, or any substantially similar product, unless such representation is true and proposed respondents possess and rely upon competent and reliable evidence that substantiates the representation. Part III of the proposed order prohibits the proposed respondents from representing that any product intended to improve the performance of any computer has been authorized, certified, licensed, endorsed, or otherwise approved by any person or organization, unless such representation is true. In addition, Part IV prohibits any representation which relates to the relative or absolute performance, attributes, benefits, or effectiveness of any product intended to improve the performance of any computer, unless proposed respondents possess and rely upon competent and reliable evidence that substantiates the representation.

The proposed order (Part V) contains recordkeeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, the proposed order (Part VI) requires distribution of a copy of the consent decree to current and future officers and agents. Further, Part VII provides for Commission notification upon a change in the corporate respondent and Commission notification when each of the individual respondents changes his present business or employment (Part VIII). The proposed order also requires the filing of compliance report(s) (Part IX).

Finally, Part X provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

*Secretary.*

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## GENERAL SERVICES ADMINISTRATION

### Privacy Act of 1974; System of Record

**AGENCY:** General Services Administration (GSA).

**ACTION:** Notice to amend a record system that is subject to the Privacy Act of 1974.

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**SUMMARY:** GSA proposes amending a record system that is subject to the Privacy Act of 1974 (5 U.S.C. 522a), as amended.

**DATES:** The proposed action becomes effective 30 days after the publication of this notice, unless comments received result in a contrary decision.

**ADDRESSES:** Send comments to Ms. Elaine P. Dade, Acting Records Officer, 18th and F Streets NW., Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Wm. McHugh, Privacy Act Liaison (202) 501-2983).

**SUPPLEMENTARY INFORMATION:** The record system Investigation Case Files, GSA/ASM-24, is used for deciding employment suitability, issuing subpoenas and security clearances; and taking civil, criminal, and administrative actions.