

IN THE MATTER OF

MICRON ELECTRONICS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE CONSUMER LEASING ACT, REGULATION M AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3887. Complaint, July 28, 1999--Decision, July 28, 1999

This consent order, among other things, requires Micron Electronics, Inc., a manufacturer and marketer of computer systems, to provide consumers with clear, readable, and understandable information in their lease advertising. The consent order also prohibits respondent from stating the amount of any payment or that any or no initial payment is required at lease signing, without disclosing all of the terms required by law.

Participants

For the Commission: *Sally Pitofsky, Rolando Berrelez, and David Medine.*

For the respondent: *John Geering*, in-house counsel, Nampa, ID.

COMPLAINT

The Federal Trade Commission, having reason to believe that Micron Electronics, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Micron Electronics, Inc. is a Minnesota corporation with its principal office or place of business at 900 East Karcher Road, Nampa, Idaho. Respondent markets computer systems for sale or lease to consumers.

2. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

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, 15 U.S.C. 44.

4. Respondent has disseminated or has caused to be disseminated consumer lease advertisements ("lease advertisements") for computer systems, including but not necessarily limited to the attached Micron Exhibits A, B, and C. Micron Exhibit A is a magazine advertisement. Micron Exhibit B is a newspaper advertisement. Micron Exhibit C is an electronic advertisement. These lease advertisements contain the following statements:

A. **"Millennia 300 Personal Edition . . . \$2,099**

Consumer lease \$84/mo.

...

Millennia 333 DVD Edition . . . \$2,999

Consumer lease \$119/mo."

[A fine print disclosure at the bottom of the ad states:

". . . prices do not include shipping and handling and any applicable taxes. . . . Business lease prices based on 36-month lease, and consumer lease prices based on 30-month lease. . . ."] (Micron Exhibit A)

B. [The ad states five lease offers, including:]

"Millennia LXE 166 . . .

Starting at: **\$1,199**⊠

Consumer lease \$48/mo.

...

Millennia XKU 266 . . .

Starting at: **\$2,299**⊠

Consumer lease \$92/mo.

[A fine print disclosure at the bottom of the ad states:

". . . prices do not include shipping and handling and any applicable taxes. . . . Business lease prices based on 36-month lease, and consumer lease prices based on 30-month lease. . . ."] (Micron Exhibit B)

C. **"TRANSPORT TREK.266.13.3"**

A true desktop replacement you can actually afford

...

Total System Price as Configured: \$2499

How would you like to purchase?

*** Order online with credit card (Secure)**

*** Business Lease \$86.72 per month* (Secure)**

☆ Consumer Lease \$98.96 per month (Secure) . . ."**

[A fine print disclosure at the bottom of the ad, on the last screen in a series of screens, states:

"** Based on 15% purchase option 30 month"] (Micron Exhibit C).

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count I: Failure to Disclose, and/or Failure to
Disclose Adequately, Lease Terms

5. In lease advertisements, including but not necessarily limited to Micron Exhibits A, B, and C, respondent has represented, expressly or by implication, that consumers can obtain the advertised computer systems at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount.

6. These lease advertisements have failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception and/or the term of the lease. This information would be material to consumers in deciding whether to lease a computer system from respondent. The failure to disclose, and/or to disclose adequately, these additional terms, in light of the representation made, was, and is, a deceptive practice.

7. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

Count II: Failure to Disclose, and/or Failure to Disclose
Clearly and Conspicuously, Required Information

8. Respondent's lease advertisements, including but not necessarily limited to Micron Exhibits A, B, and C, state a monthly payment amount, but fail to disclose, and/or fail to disclose clearly and conspicuously, certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms:

- a. That the transaction advertised is a lease;
- b. The total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: 1) exclude third-party fees that vary by state or locality, such as taxes, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed;

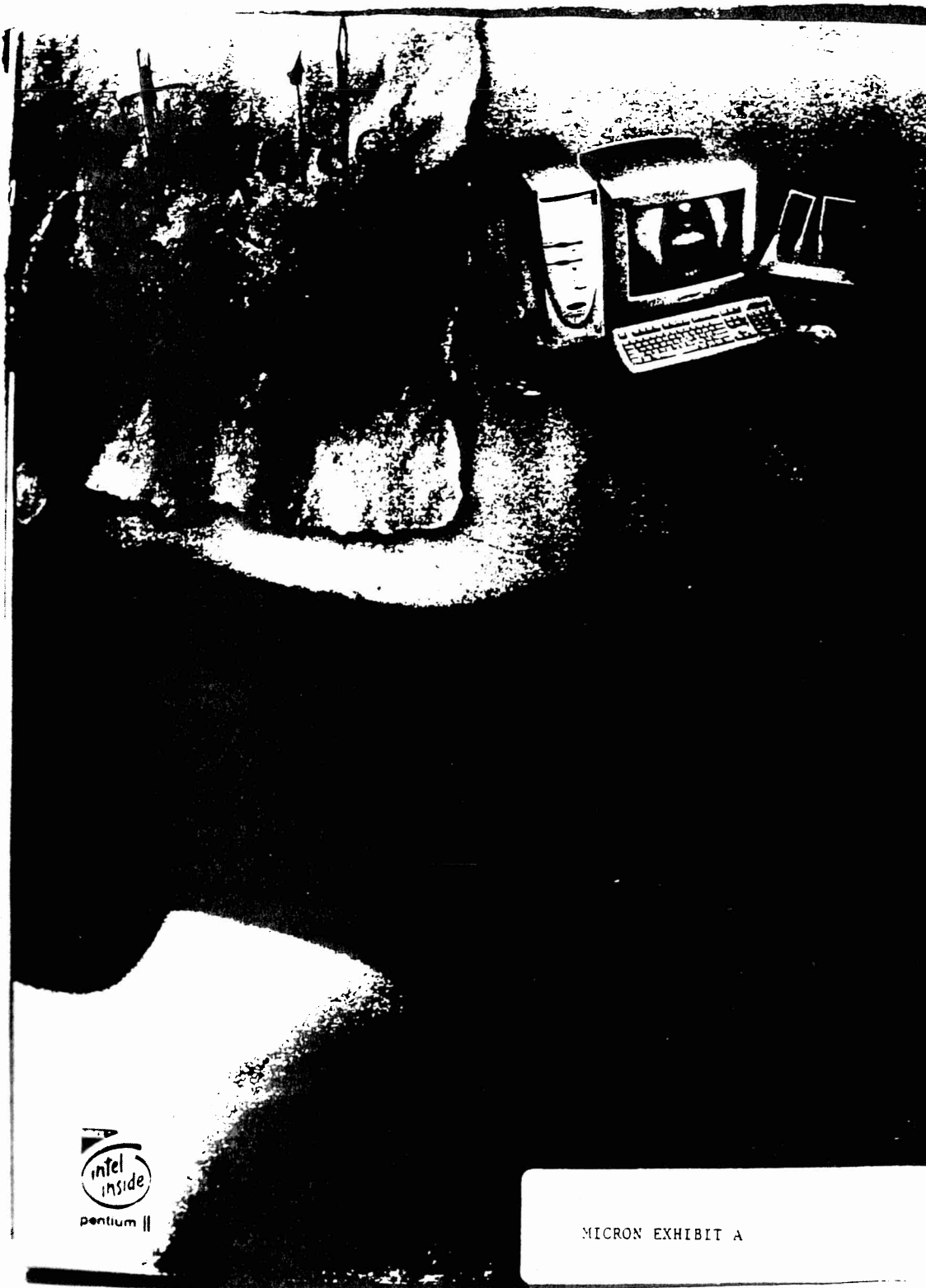
- c. Whether or not a security deposit is required;
- d. The number, amounts, and timing of scheduled payments; and
- e. That an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

9. Respondent's practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, and Section 213.7 of Regulation M, 12 CFR 213.7:

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EXHIBIT A



intel
inside
pentium II

MICRON EXHIBIT A

Complaint

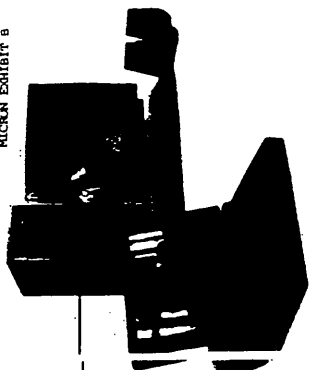
128 F.T.C.

EXHIBIT B

MICRON EXHIBIT B

Micron has a system to Meet Your Needs

The Micron™ Showroom has everything you or your business needs in a PC system. Everything is in stock and priced to move today. Limited quantity units are available on a first come, first served basis only. This week we're reducing the price on all Micron Millennium™ Mx desktop PCs in stock — until they're gone! Visit today to take advantage of these in-house prices. Plus, every Micron system you purchase is backed by Micron's industry-leading limited warranties and phone support — all included in the price. You can't find a better deal in town!



Desktop

Portable

Millennia Lx1 166

Intel 166MHz Pentium® processor with MMX™ technology
32MB SDRAM
3.2GB EIDE hard drive
16X DSE CD-ROM drive
56K fax/modem
17" screen, 2400x800 display
Microsoft Windows 95
Microsoft Office Small Business Edition
Lexmark 1000 color printer

Starting at **\$1,199***

Consumer Price \$1,499

TransPort Xp1 150

Intel 150MHz Pentium processor with MMX technology
32MB SDRAM
2.1GB EIDE hard drive
32X CD-ROM drive
12.1" Active matrix, 600x400 display
Microsoft Windows 95
Microsoft Office Small Business Edition

Starting at **\$1,699***

Consumer Price \$1,999

Millennia Mx1 200

Intel 200MHz Pentium processor with MMX technology
32MB SDRAM
4GB hard drive
100MB Tempus Zip drive
24X CD-ROM drive
17" screen, 2400x800 display
17" Micron™ Active matrix, 15" display
Microsoft Windows 95
Microsoft Office Pro 97

Starting at **\$1,399***

Consumer Price \$1,699

With additional 1GB RAM \$1,449

TransPort Xm 166

Intel 166MHz Pentium processor with MMX technology
32MB SDRAM
2.1GB EIDE hard drive
12.1" Active matrix, 600x400 display
Microsoft Windows 95
Microsoft Office Small Business Edition

Starting at **\$1,799***

Consumer Price \$1,999

Millennia Xm1 266

Intel 266MHz Pentium II processor with MMX technology
64MB SDRAM
6.4GB hard drive
32X CD-ROM drive
56K fax/modem
17" Micron™ Active matrix, 15" display
Microsoft Windows 95
Microsoft Office Small Business Edition

Starting at **\$2,299***

Consumer Price \$2,599

For a limited time take \$100 off any reconditioned system and get your choice of a Lexmark 1000 printer or a black Advent AV370 speaker system.† Plus take \$100 off any canceled system in stock.*

† In the United States. †† Offer is limited. Offer is subject to stock.

Stop By Or Call
801-256-4200
Web site: www.micronpc.com

* Configuration may vary with other systems. Limited to stock on hand.
† Maximum transactional spend of up to \$1000 when downloading data and 33.4Mbps download speed. Actual performance is dependent upon network factors and network bandwidth. See www.micronpc.com for additional information.
†† Offer is limited. Offer is subject to stock.
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EXHIBIT B

...in a single work...

...the speed...

...the match...

...ride all the way to the...

Millennia 300 Personal Edition

Intel 300MHz Pentium® II processor
(features MMX™ technology)
32MB SDRAM
4.0GB Ultra ATA hard drive
19" Micron 500 PGL 28dp monitor (13.7" display)

82440LX chip set
512KB internal cache, 2MB BIOS
3.5" floppy
32X EIDE variable speed CD-ROM drive
128-bit ACP 3D video with 4MB SGRAM
3A voice PCI Wavetable sound, stereo speakers
56Kbps data/fax modem*
104-key enhanced keyboard
Microsoft® IntelliMouse™, USB connections
Microsoft Windows® 95 and MS® Plus!
Microsoft Home Essentials
5-year/3-year Micron Power™ limited warranty

2,099

Millennia 333 DVD Edition

Intel 333MHz Pentium II processor
(features MMX technology)
64MB SDRAM
8.0GB Ultra ATA hard drive
19" Hitachi Superscan CM791 monitor (18" display)

82440LX chip set
512KB internal cache, 2MB BIOS
Integrated 100MB Iomega Zip drive
3.5" floppy
DVD-ROM drive and PCI decoder card
128-bit ACP 3D video with 4MB SGRAM
AWE 64 ISA sound card, speakers with
powered subwoofer
56Kbps data/fax modem*
104-key enhanced keyboard
Microsoft IntelliMouse, USB connections
Microsoft Windows 95 and MS Plus!
Microsoft Home Essentials
5-year/3-year Micron Power limited warranty

2,999

Limited Offer

buy
on Micron PC and get
\$200
in savings
on Microsoft

Limited offer from Microsoft —
buy a Micron Millennium system
and receive a coupon book
worth over \$200 in savings
on leading Microsoft products!
Call for details.

boot

MICRON
ELECTRONICS

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EXHIBIT C


Micron Electronics, Inc. - Micronpc.com

http://www.micronpc.com/store/Order.htm

MICRON
1 800 209 9696

TRANSPORT TREK.266.13.3"

A true desktop replacement you can actually afford



- 64MB.EDO DRAM
- 3.2GB.HARD DRIVE FOR TREK
- TEAC.IN TRANSPORT.3.5"
- ALPHA TOP.24X.CD-ROM FOR TREK
- MS.OFFICE 97 SBE.CD.
- NO MODEM
- MICROSOFT.VIN 98.CD.TREK
- SMART LI-ION.TREK PRIMARY BATTERY
- NO CARRYING CASE
- 5 YR PROC/MEM 1YR PARTS&LABOR.3BD - GTS
- CUSTOMER SELECTS.NO ADDITIONAL.WARRANTY SERVICE OPTIONS
- NO MICRON.SOFTWARE SOLUTION PK

Total System Price as Configured: \$2499

How would you like to purchase?

Order online with credit card **(Secure)**

Request Quote and have salesperson contact me

Business Lease \$86.72 per month***(Secure)**

Consumer Lease \$98.96 per month****(Secure)**

[Reconfigure](#)

Order using [text chat](#)

If you are interested in purchasing the system you just configured, or if you would like to receive additional information concerning the system, please click the appropriate button above. All requests will automatically be sent to Micron's Sales Department for processing and a representative will contact you shortly to provide you either additional information concerning your system, or to provide you the exact price of your configured system and to confirm your order.

The prices calculated by the MicronOpt Online Configurator are approximations only. The calculated prices do not include shipping and handling charges or any applicable taxes. If you place an order with the MicronOpt Online Configurator, your credit card will not be charged until we confirm your acceptance of the exact charge for your configured system.

If you would like to purchase your system now, please press the "Order Now" button. NOTE: pressing either button will send you to a secure form. If

EXHIBIT C

Micron Electronics, Inc. - Micronopt.com

http://www.micronopt.com/store/Order.n

your browser does not support security, or if you are unsure whether it supports security, please contact Micron Sales at (800) 209-9686.

To learn about quantity discounts, click on the "Request Information" button or call 1-800-209-9686.

All prices and specifications are subject to change without notice. Your order must be accepted by a Micron representative before it will be processed. Micron Electronics, Inc., is not responsible for omissions and/or errors in photography or text, or from any losses incurred through your use of the MicronOpt Online Configurator. Because your order will be controlled by the limited warranty covering your Micron system and Micron's terms and conditions of sale, you should review these documents before making your purchase.

* Based on Fair Market Value 36 month
** Based on 15% purchase option 36 month

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Legal Information.

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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 the 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 Micron Electronics, Inc. is a Minnesota corporation with its principal office or place of business at 900 East Karcher Road, Nampa, Idaho.

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

DEFINITIONS

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

1. "*Clearly and conspicuously*" shall mean as follows:

a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.

b. In a print advertisement, a disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. "*Equal prominence*" shall mean as follows:

a. In a television, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.

b. In a print advertisement, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. "*Total amount due at lease signing or delivery*" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the computer equipment, whichever is later, as required by Regulation M, 12 CFR 213, as amended. The total amount due at lease signing or delivery may: 1) exclude third-party fees, such as taxes, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

4. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

5. Unless otherwise specified, "*respondent*" shall mean Micron Electronics, Inc., a corporation, its successors and assigns and its officers; and each of the above's agents, representatives, and employees.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended, shall not, in any manner, expressly or by implication:

A. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with equal prominence the total amount due at lease signing or delivery.

B. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amounts, and timing of scheduled payments; and
5. That an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667c(a), as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

For radio advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. 1667c(C), and Section 213.7(f) of Regulation M, 12

CFR 213.7(f), as amended. For television advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

C. Fail to comply in any other respect with Regulation M, 12 CFR 213, as amended, and the CLA, 15 U.S.C. 1667-1667e, as amended.

II.

It is further ordered, That respondent Micron Electronics, Inc., and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

It is further ordered, That respondent Micron Electronics, Inc., and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, managers, 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 shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

It is further ordered, That respondent Micron Electronics, Inc., 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 necessarily 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 respondent learns less than thirty (30)

days prior to the date such action is to take place, respondent 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.

V.

It is further ordered, That respondent Micron Electronics, Inc., and its successors and assigns, 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 it has complied with this order.

VI.

This order will terminate on July 28, 2019, 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.

IN THE MATTER OF

DELL COMPUTER CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
CONSUMER LEASING ACT, REGULATION M AND
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3888. Complaint, July 28, 1999--Decision, July 28, 1999

This consent order, among other things, prohibits Dell Computer Corporation, a marketer of computer systems, from failing to disclose clearly that any advertised lease terms pertain to a lease offer. The consent order also prohibits respondent from stating the amount of any payment or that any or no initial payment is required at lease signing, without disclosing all of the terms required by law.

Participants

For the Commission: *Sally Pitofsky, Rolando Berrelez, and David Medine.*

For the respondent: *Barry Cutler, Baker & Hostetler, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Dell Computer Corporation, a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, 15 U.S.C. 45-58, as amended, the Consumer Leasing Act, 15 U.S.C. 1667-1667e, as amended, and its implementing Regulation M, 12 CFR 213, as amended, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Dell Computer Corporation is a Delaware corporation with its principal office or place of business at One Dell Way, Round Rock, Texas. Respondent markets computer systems for sale or lease to consumers.

2. Respondent has disseminated advertisements to the public that promote consumer leases, as the terms "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended.

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, 15 U.S.C. 44.

4. Respondent has disseminated or has caused to be disseminated consumer lease advertisements ("lease advertisements") for computer systems, including but not necessarily limited to the attached Dell Exhibits A and B. Dell Exhibit A is an electronic advertisement. Dell Exhibit B is a television advertisement. These lease advertisements contain the following statements:

A. **"DELL DIMENSION XPSR . . .**
Configured Price*
\$2,288
\$86/month
*** Business ☆ Personal . . ."**

[A fine print disclosure at the bottom of the ad states:

". . . Personal leasing arranged by Dell Financial Services L.P., an independent entity, to qualified customers. Amount of monthly lease payments above is based upon 36 month lease. Above monthly lease payments exclude taxes which may vary (for example, Hartford City, IN, sales tax: \$4.30/month); shipping cost due with first payment; no security deposit required; subject to credit approval and availability. Lease terms are subject to change without notice."] (Dell Exhibit A)

B. [Audio:] **" . . . For just \$99 a month, you can lease this Dell Dimension XPS with a 233 MHz Intel Pentium Processor."**
 [Video:] **"\$99/MONTHX, 24 MOs"**

[A fine print disclosure at the bottom of the ad states:

". . . Personal leasing arranged by Dell Financial Services L.P., an independent entity; Amount of monthly lease payments based upon 24-month lease. First and last monthly lease payments due prior to delivery: \$197. Above monthly lease payments exclude tax which may vary (for example, Hartford City, IN, sales tax: \$4.93); shipping charges due with second payment; no security deposit required; subject to credit approval and availability. Lease terms subject to change without notice. For details, call 1-800-955-3355. . . ."] (Dell Exhibit B)

FEDERAL TRADE COMMISSION ACT VIOLATIONS

Count I: Failure to Disclose Adequately that
 Transaction Advertised is a Lease

5. In lease advertisements, including but not necessarily limited to Dell Exhibit A, respondent has represented, expressly or by implication, that consumers can purchase the advertised computer systems for the monthly payment amounts prominently stated in the advertisements. These advertisements do not disclose adequately that

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the advertised monthly payment amounts are components of lease offers.

6. The fact that the offers pertain to leases would be material to consumers in deciding whether to lease or purchase a computer from respondent. The failure to disclose adequately that fact, in light of the representation made, was, and is, a deceptive practice.

7. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

Count II: Failure to Disclose Adequately Lease Terms

8. In lease advertisements, including but not necessarily limited to Dell Exhibit A and B, respondent has represented, expressly or by implication, that consumers can obtain the advertised computer systems at the terms prominently stated in the advertisements, including but not necessarily limited to the monthly payment amount.

9. These lease advertisements have failed to disclose adequately additional terms pertaining to the lease offer, such as the total amount of any payments due at lease inception or the term of the lease. This information would be material to consumers in deciding whether to lease a computer system from respondent. The failure to disclose these additional terms, in light of the representation made, was, and is, a deceptive practice.

10. Respondent's practices constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45(a).

CONSUMER LEASING ACT AND REGULATION M VIOLATIONS

Count III: Failure to Disclose Required Information Clearly and Conspicuously

11. Respondent's lease advertisements, including but not necessarily limited to Dell Exhibits A and B, state a monthly payment amount, but fail to disclose clearly and conspicuously certain additional terms required by the Consumer Leasing Act and Regulation M, including one or more of the following terms:

- a. That the transaction advertised is a lease;
- b. The total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation. This total amount may: 1) exclude third-party fees that vary by state or locality, such as taxes, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed;
- c. Whether or not a security deposit is required;
- d. The number, amounts, and timing of scheduled payments; and
- e. That an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

12. Respondent's practices have violated Section 184 of the Consumer Leasing Act, 15 U.S.C. 1667c, and Section 213.7 of Regulation M, 12 CFR 213.7.

EXHIBIT A

The Dell Online Store: Build Your System

http://commerce.us.dell.com/dellstore/config.asp?order_code=50070

DELL The Online Store Buy Online 1-800-WWW

DELL.COM/HOME POINT-CLICK CONFIGURE BUY IT TOGETHER GET ANY CASHIER

DELL DIMENSION XPSR

Built with high performance and reliability in mind, the Dell Dimension XPS R series use the latest in technology to deliver the tremendous speed your high-end applications are craving.

Configured Price: **\$2,288**
\$86 /month
 Business Personal

Dell Dimension XPS R MiniTower
Pentium® II processor, 400MHz, w/512K Cache

Memory
64MB 100MHz SDRAM

Hard Drive HELP ME CHOOSE
A larger hard drive provides more storage for your operating system, Internet files, applications, graphics and scanned images! Dell offers EIDE hard drives up to 16.8 GB.
8.4GB 5400rpm Ultra ATA Hard Drive

Monitor HELP ME CHOOSE
Upgrading to a larger monitor is surprisingly affordable. Dell's line-up of exceptional monitors can deliver enhanced resolution and refresh rates, crisp, vibrant imaging and amazing color depth.
1000LS 17 inch Monitor (15.9 inch v.i.s.)

Video Card HELP ME CHOOSE
Diamond Permedia 2, 8MB AGP 3D Video Card

CD-ROM Drive HELP ME CHOOSE
17/40X EIDE CD-ROM

Sound Card HELP ME CHOOSE
Create a more realistic listening experience with patented A3D sound positioning technology, available on the Turtle Beach™ A3D 64-Voice Sound Card.
Integrated Crystal WaveTable

Speakers HELP ME CHOOSE
Altec Lansing ACS295 Speakers

Storage Products HELP ME CHOOSE
Back up valuable files or simply transport large amounts of data on one Zip 100MB cartridge which holds 70 times more than a standard floppy diskette.
 IOMEGA Zip Built-In w/2 disks, Windows 95 and 98 [\$99]
 IOMEGA Zip w/2 media for Windows NT [\$99]
 3 pack of Iomega 100MB disks [\$49]
 Iomega ZIP External/Parallel - includes ONE zip disk for Windows 95 & 98 [\$149]

Operating System
Free Microsoft® Windows™ 98 Upgrade Packet included with each Dell Dimension system with Windows™ 95 factory installed or you can order you system now with Windows™ 98.
Microsoft Windows 98

McAfee VirusScan 3.1 at no additional charge
McAfee VirusScan 3.1 (For Windows 95 & 98)

Bundled Software HELP ME CHOOSE
Home Essentials 98/Entertainment Pack - The Puzzle Collection

Complaint

128 F.T.C.

EXHIBIT A

The Dell Online Store: Build Your System

http://commerce.us.dell.com/dellstore/config.asp?order_code=50070

Modem

56K Capable U.S. Robotics x2 Winmodem w/sound

Network Card

Network connectivity can boost your productivity by sharing files over e-mail, sharing printers within workgroups and providing universal Internet access.

None

Keyboard

Spacesaver Windows 95 Quietkey Keyboard

Service HELP ME CHOOSE

3Yr Limited Warranty; Yr 1 Next Bus. Day On-Site Svc

Mouse

Microsoft PS2 Intellimouse

Floppy Drive

1.44MB Floppy Drive

Printers HELP ME CHOOSEDon't forget your printer! Whether you need to print your kid's artwork or output professional quality art, Dell has the perfect printer to meet your needs. [Click here](#) for warranty information.

- HP DeskJet 722C Color Printer (Requires a printer cable) [\$299]
- HP OfficeJet 600 (Includes a printer cable) [\$499]
- HP LaserJet 6Lse 6ppm 600x600 dpi (Requires a printer cable) [\$429]
- 10' IEEE Parallel Printer Cable [\$24.99]

Scanners HELP ME CHOOSEScanners let you turn hardcopies of photographs and graphics into digital files that you can send, print or manipulate with your computer. From personal to professional, we have a scanner for you. [Click here](#) for warranty information.

- HP ScanJet 5100Cse for Windows 98 [\$299]
- HP ScanJet 6100C [\$799]

Power Protection HELP ME CHOOSEElectrical surges and power outages could damage your system—Protect your investment with a product from APC. [Click here](#) for warranty information.

- APC Surge Station Pro 8T2 [\$39]
- APC Back UPS Office [\$99]
- APC Back-UPS Pro 650 PnP w/software [\$289]

Software and AccessoriesSave a trip to the store. Choose among these popular products that can make your new system even more versatile. [Click here](#) for warranty information.

- Microsoft SideWinder Precision Pro [\$69]
- Microsoft Sidewinder Precision Pro with Flight Simulator [\$99]
- Intuit Quicken Deluxe 98 (A \$15 Readyware installation fee will be added per system) [\$62]
- Jump Start Kindergarten & Ready to read w/ Pooh [\$69]
- Game Pack I - Myst, Command & Conquer Gold, & Warcraft II [\$49]
- Education Pack I- Reader Rabbit, Math Blaster & Logic Quest [\$49]

UPDATE PRICE

ADD TO CART

Configured Price:*

\$2,288

\$86 /month

EXHIBIT A

The Dell Online Store: Build Your System

http://commerce.us.dell.com/dellstore/config.asp?order_code=50071

This configuration is presented for your convenience only and is subject to change without notice. It is available for purchase by US customers who take delivery in the US. Dell will not be responsible for typographical or other errors or omissions regarding prices or other information. All sales are subject to Dell's Term and Conditions of Sale.

* Price and lease payments are subject to change without notice and DO NOT INCLUDE SHIPPING CHARGES OR APPLICABLE TAXES. Promotional offers and prices are for a limited time.

Personal leasing arranged by Dell Financial Services L.P., an independent entity, to qualified customers. Amount of monthly lease payments above is based upon 36 month lease. Above monthly lease payments exclude taxes which may vary (for example, Hartford City, IN, sales tax: \$4.30/month); shipping cost due with first payment; no security deposit required; subject to credit approval and availability. Lease terms are subject to change without notice.

For US customers only.
Copyright 1998 Dell Computer Corporation. All rights reserved. ([Terms of Use](#) | [Terms and Conditions of Sale](#))
Thursday, July 02, 1998 10:20:02 AM CDT
[Online privacy practices](#)

Complaint

128 F.T.C.

EXHIBIT B

**QDEL 8526
SCRIPT**

DHS 01431

Dell Exhibit B

Complaint

EXHIBIT B

TV Copy

Goldberg Moser O'Neill

Client: Dell Computers
Date: December 1, 1997 5:48 PM
Job No.: DEB2142.Rollerblade/399 Lines
Length: :50
FN: The Test
Rev No. 13
Final Approved
Page: 1

Proofreader: T.R.
Copywriter:
Creative Director:
Account Executive:
Client:
Legal:
As Produced

Goldberg Moser O'Neill
77 Maiden Lane
San Francisco CA 94108

VIDEO:

AUDIO:

OPEN ON A HUGE CEMENT
MONOLITH IN THE MIDDLE OF
THE DESERT.

CUT TO C/U OF STRAPS BEING
BUCKLED.

CUT TO WIDE SHOT OF GUY
STRAPPED INTO A G-FORCE
LIKE MACHINE. LAB GUYS ARE
STANDING AROUND IN LAB
COATS.

CUT TO TIGHT SHOT OF
BUTTON BEING PUSHED.

THE MAN STARTS TO GO
AROUND CONCAVE TURN.

C/U OF BUTTON BEING
PUSHED.

CUT BACK TO ROLLERBLADE
GOING EVEN FASTER AND
SUDDENLY STARTS SCALING
THE WALL.

CUT TO LAB GUYS LOOKING
OUT THROUGH GLASS IN
CONTROL TOWER.

C/U OF EYES OF GUY ABOUT
TO PUSH BUTTON.

CUT TO C/U OF FINGER
PUSHING BUTTON.

CUT TO GUY AT DELL
COMPUTER.

AVO: When Rollerblade
demands hypersonic speed...

AVO: When they require fanatical
performance...

AVO: When they crave
unfathomable feats...

AVO: They get it ...

DHS 01432

Complaint

128 F.T.C.

EXHIBIT B

TV Copy

Client: Dell Computers
 Date: December 1, 1987 5:48 PM
 Job No.: DEB2142.Rblade/899 Lease
 Length: :60
 FN: The Tex
 Rev No. 13
 Final Approved
 Page: 2

Proofreader:
 Copywriter:
 Creative Director:
 Account Executive:
 Client:
 Layout:
 As Produced

Goldberg Moser O'Neill

Goldberg Moser O'Neill
 77 Maiden Lane
 San Francisco CA 94108

AVO: On a Dell Computer.

SCREEN HAS MONTAGE OF
 ROLLERBLADE SALES DATA
 POPPING UP.

AVO: In fact, Rollerblade uses
 Dell Computers every day.

CUT TO CLOSE-UP OF DELL
 DIMENSION SYSTEM.
 SUPER: STATIC INTEL MMX
 LOGO.

AVO: What can we build yours to
 do? Call and for just \$99 a
 month you can lease this Dell
 Dimension XPS with a...

LEGAL SUPER: PERSONAL
 LEASING ARRANGED BY DELL
 FINANCIAL SERVICES L.P., AN
 INDEPENDENT ENTITY;
 AMOUNT OF MONTHLY LEASE
 PAYMENTS BASED UPON 24-
 MONTH LEASE. FIRST AND
 LAST MONTHLY LEASE
 PAYMENTS DUE PRIOR TO
 DELIVERY; \$197. ABOVE
 MONTHLY LEASE PAYMENTS
 EXCLUDE TAX WHICH MAY
 VARY (FOR EXAMPLE,
 HARTFORD CITY, IN SALES
 TAX: \$4.93); SHIPPING
 CHARGES DUE WITH SECOND
 PAYMENT; NO SECURITY
 DEPOSIT REQUIRED; SUBJECT
 TO CREDIT APPROVAL AND
 AVAILABILITY. LEASE TERMS
 SUBJECT TO CHANGE
 WITHOUT NOTICE. FOR
 DETAILS, CALL 1-800-955-
 3355. PRICES AND
 SPECIFICATIONS VALID IN
 THE U.S. ONLY AND SUBJECT
 TO CHANGE WITHOUT NOTICE.

SUPER: 233MHz PENTIUM® II
 PROCESSOR.

DHS 01433

151

Complaint

EXHIBIT B

TV Copy

Client: Dell Computers
 Date: December 4, 1997 5:08 PM
 Job No.: DEB2142, Reel ad/\$99 Lease
 Length: :60
 FN: The Test
 Rev No. 13
 Final Approved . . .
 Page: 3

Goldberg Moser O'Neil

Proofreader:
 Copywriter:
 Creative Director:
 Account Executive:
 Client:
 Legal:
 Art Produced

Goldberg Moser O'Neil
 77 Maiden Lane
 San Francisco CA 94108

PAN ALONG KEYBOARD.

AVO: 233MHz Intel Pentium II Processor.

SUPER THROUGHOUT:
 800-745-DELL
 WWW.DELL.COM/TV

AVO: 64 megs of SDRAM, 4.3 gig hard drive...

PAN DOWN MINI-TOWER.

CUT TO MONITOR.

AVO: [with emphasis] Microsoft Windows 95 and Home Essentials 98...

CUT TO CD-ROM TRAY.

AVO: A large-screen monitor...

CUT TO SKATER GOING
 THROUGH TEST ON MONITOR
 SCREEN.

AVO: 32X max variable CD-ROM...

CUT BACK TO FULL SYSTEM
 SHOT.

AVO: Even an AGP video card...

FULL SYSTEM SHOT.

AVO: And 24-hour tech support.

CUT TO CAMERA CARD
 CONTAINING:
 - 233MHz INTEL® PENTIUM® II
 PROCESSOR
 - 64MB SDRAM MEMORY
 - 4.3GB HARD DRIVE
 - 1000LS MONITOR (15.9" v.i.s.)
 - MICROSOFT® WINDOWS® 95
 - \$99/MONTH*, 24 MOs.

AVO: The Dell Dimension XPS...

AVO: With a 233Mhz Intel Pentium II Processor.

INTEL PENTIUM II MMX LOGO.

CUT TO SKATER RACING
 AROUND STADIUM.

SFX: Intel audio clip (4-tone bong).

DHS 01434

Complaint

128 F.T.C.

EXHIBIT B

TV Copy

Client: Dell Computers
Date: December 1, 1997 5:00 PM
Job No.: DEB2142.Rbladel\$99 Lease
Length: :60
FN: The Test
Rev No. 13
Final Approved
Page: 4

Proofreader:
Copywriter:
Creative Director:
Account Executive:
Client:
Legal:
Art Producer

Goldberg Moser O'Neill

Goldberg Moser O'Neill
77 Maiden Lane
San Francisco CA 94108

CUT TO FINAL SUPER: DELL®
LOGO, 800-745-DELL AND
WWW.DELL.COM/TV

LEGAL SUPER: ©1997 DELL
COMPUTER CORPORATION.
ALL RIGHTS RESERVED.

AVO: Pure performance. Just
\$99 a month.

AVO: Dell. What can we build
yours to do?

DHS 01435

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 Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, 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 the 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 Dell Computer Corporation is a Delaware corporation with its principal office or place of business at One Dell Way, Round Rock, Texas.
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

DEFINITIONS

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

1. "*Clearly and conspicuously*" shall mean as follows:

a. In a television, video, radio, or Internet or other electronic advertisement, an audio disclosure shall be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend it. A video disclosure shall be of a size and shade, and shall appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend it.

b. In a print advertisement, a disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

2. "*Equal prominence*" shall mean as follows:

a. In a television, video, radio, or Internet or other electronic advertisement, a video disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, duration, and placement. An audio disclosure shall be delivered in the same or similar manner, including but not necessarily limited to volume, cadence, pace, and placement.

b. In a print advertisement, a disclosure shall be presented in the same or similar format, including but not necessarily limited to type size, shade, contrast, and placement.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. "*Total amount due at lease signing or delivery*" as used herein shall mean the total amount of any initial payments required to be paid by the lessee on or before consummation of the lease or delivery of the computer equipment, whichever is later, as required by Regulation M, 12 CFR 213, as amended. The total amount due at lease signing or delivery may: 1) exclude third-party fees, such as taxes, and disclose that fact or 2) provide a total that includes third-party fees based on a particular state or locality as long as that fact and the fact that such fees may vary by state or locality are disclosed. (Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

4. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

5. Unless otherwise specified, "*respondent*" shall mean Dell Computer Corporation, a corporation, its successors and assigns and its officers; and each of the above's agents, representatives, and employees.

I.

It is ordered, That respondent, directly or through any corporation, subsidiary, division, or any other device, in connection with any advertisement to promote, directly or indirectly, any consumer lease in or affecting commerce, as "advertisement" and "consumer lease" are defined in Section 213.2 of Regulation M, 12 CFR 213.2, as amended, shall not, in any manner, expressly or by implication:

A. Fail to disclose clearly and conspicuously that any advertised lease terms, including but not limited to a monthly payment amount or downpayment, pertain to a lease offer.

B. Make any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with equal prominence the total amount due at lease signing or delivery.

C. State the amount of any payment or that any or no initial payment is required at lease signing or delivery, if delivery occurs after consummation, without disclosing clearly and conspicuously all of the terms required by Regulation M, as follows:

1. That the transaction advertised is a lease;
2. The total amount due at lease signing or delivery;
3. Whether or not a security deposit is required;
4. The number, amounts, and timing of scheduled payments; and
5. That an extra charge may be imposed at the end of the lease term in a lease where the liability of the consumer is based on the difference between the residual value of the leased property and its realized value at the end of the lease term.

(Section 184(a) of the Consumer Leasing Act ("CLA"), 15 U.S.C. 1667c(a), as amended, and Section 213.7 of Regulation M, 12 CFR 213.7, as amended.)

For radio advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 184(c) of the CLA, 15 U.S.C. 1667c(C), and Section 213.7(f) of Regulation M, 12 CFR 213.7(f), as amended. For television advertisements, respondent may also comply with the requirements of this subparagraph by utilizing Section 213.7(f) of Regulation M, as amended.

D. Fail to comply in any other respect with Regulation M, 12 CFR 213, as amended, and the CLA, 15 U.S.C. 1667-1667e, as amended.

II.

It is further ordered, That respondent Dell Computer Corporation, and its successors and assigns, shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying all records that will demonstrate compliance with the requirements of this order.

III.

It is further ordered, That respondent Dell Computer Corporation, and its successors and assigns, shall deliver a copy of this order to all current and future principals, officers, directors, managers, 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 shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

It is further ordered, That respondent Dell Computer Corporation, 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 necessarily 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 respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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.

V.

It is further ordered, That respondent Dell Computer Corporation, and its successors and assigns, 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 it has complied with this order.

VI.

This order will terminate on July 28, 2019, 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

128 F.T.C.

IN THE MATTER OF

SNIA S.P.A.

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-3889. Complaint, July 28, 1999--Decision, July 28, 1999

This consent order, among other things, requires SNIA S.p.A., a manufacturer and seller of heart-lung machines, to divest certain assets to Baxter Healthcare Corporation in accordance with the divestiture agreement, or to a Commission-approved acquirer.

Participants

For the Commission: *Christina Perez, Michael Barnett, Ann Malester, William Baer, Jeremy Bulow and Louis Silvia.*

For the respondent: *Wm. Randolph Smith, Crowell & Moring, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent SNIA S.p.A. ("SNIA"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire 100% of the outstanding voting securities of COBE Cardiovascular, Inc., as well as certain cardiopulmonary and other cardiovascular assets and liabilities from COBE Laboratories, Inc. and other subsidiaries of Gambro AB ("Gambro"), a corporation subject to the jurisdiction of the Commission, 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, 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, stating its charges as follows:

I. THE RESPONDENT

1. Respondent SNIA is a corporation organized, existing and doing business under and by virtue of the laws of Italy; with its principal place of business located at Borgonuovo 14, 20121 Milano, Italy.

2. Respondent is engaged in, among other things, the research, development, manufacture and sale of heart-lung machines.

3. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

II. THE ACQUIRED COMPANY

4. Gambro is a corporation organized, existing and doing business under and by virtue of the laws of Sweden, with its principal place of business located at Hamangatan 2, 10391 Stockholm, Sweden.

5. Gambro, through COBE Cardiovascular, Inc., COBE Laboratories, Inc. and other subsidiaries, is engaged in, among other things, the research, development, manufacture and sale of heart-lung machines.

6. Gambro is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

7. Pursuant to a November 23, 1998 Asset and Stock Purchase Agreement, SNIA has agreed to acquire 100% of the outstanding voting securities of COBE Cardiovascular, Inc., as well as certain cardiopulmonary and other cardiovascular assets and liabilities from COBE Laboratories, Inc. and other subsidiaries of Gambro, for approximately \$260 million ("Acquisition").

IV. THE RELEVANT MARKET

8. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the research, development, manufacture and sale of heart-lung machines. Heart-lung machines are life-sustaining medical devices used during open-heart surgery to replace the functions of the heart and lungs. Heart-lung machines are the durable equipment portion of an extracorporeal bypass system that circulates and provides oxygen to blood during

surgery by shunting blood away from the heart, oxygenating the blood and returning it to the body.

9. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

V. STRUCTURE OF THE MARKET

10. The market for the research, development, manufacture and sale of heart-lung machines is highly concentrated as measured by the Herfindahl-Hirschman Index ("HHI"). The post-acquisition HHI is 4,638 points, which is an increase of 1,554 points over the pre-acquisition HHI level. Gambro and SNIA are, respectively, the largest and third largest suppliers of heart-lung machines in the United States.

11. SNIA and Gambro are actual competitors in the relevant market for the research, development, manufacture and sale of heart-lung machines.

VI. BARRIERS TO ENTRY

12. Entry into the relevant market would not be timely, likely or sufficient to deter or counteract the adverse competitive effects described in paragraph thirteen because of, among other things, the difficulties involved in designing and developing a new product, obtaining U.S. Food and Drug Administration approval, developing a nationwide service and sales network and establishing a track record for product quality and reliability.

VII. EFFECTS OF THE ACQUISITION

13. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the following ways, among others:

(a) By eliminating actual, direct and substantial competition between SNIA and Gambro in the relevant market for the research, development, manufacture and sale of heart-lung machines;

(b) By increasing the likelihood of coordinated interaction in the heart-lung machine market;

(c) By increasing the likelihood that customers of heart-lung machines would be forced to pay higher prices; and

(d) By increasing the likelihood that innovation will be reduced in the relevant market for the research, development, manufacture and sale of heart-lung machines.

VIII. VIOLATIONS CHARGED

14. The Acquisition agreement described in paragraph seven constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

15. The Acquisition described in paragraph seven, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by SNIA S.p.A. ("SNIA"), through Sorin Biomedica S.p.A., ("Sorin"), of one hundred percent (100%) of the outstanding voting securities of COBE Cardiovascular, Inc., as well as certain cardiopulmonary and other cardiovascular assets and liabilities from COBE Laboratories, Inc., and other subsidiaries of Gambro AB ("Gambro"), and it now appearing that SNIA, hereinafter sometimes referred to as "respondent," having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order, an admission by 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 Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed Agreement Containing Consent Order and placed such Agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure described 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 SNIA is a corporation organized, existing, and doing business under and by virtue of the laws of Italy, with its office and principal place of business located at Borgonuovo 14, 20121 Milano, Italy. Sorin Biomedical, Inc., a wholly-owned subsidiary of SNIA, is located at 17600 Gillette Ave., Irvine, CA.

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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*SNIA*" or "*respondent*" means SNIA S.p.A., formerly SNIA BPD S.p.A., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by SNIA S.p.A., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Sorin*" means Sorin Biomedica S.p.A., a subsidiary of SNIA, and any other SNIA subsidiary involved in the Acquisition.

C. "*COBE*" means COBE Cardiovascular, Inc., a corporation organized, existing and doing business under the laws of Colorado with its headquarters located at 14401 West 65th Way, Arvada, Colorado. COBE also includes other assets or businesses of Gambro AB that are acquired in the Acquisition.

D. "*Acquirer*" means either Baxter Healthcare Corporation, a corporation organized, existing and doing business under the laws of Delaware with its headquarters located at One Baxter Parkway, Deerfield, Illinois, or any other entity to whom respondent shall divest the COBE Heart-Lung Machine Assets pursuant to paragraph II. of this order.

E. "*Acquisition*" means the acquisition by SNIA, through Sorin, of one hundred percent (100%) of the outstanding voting securities of COBE Cardiovascular, Inc., as well as certain cardiopulmonary and other cardiovascular assets and liabilities from COBE Laboratories, Inc. and other subsidiaries of Gambro AB pursuant to the Asset & Stock Purchase Agreement dated November 23, 1998.

F. "*CE Mark*" means Conformite Europeenne Mark or any other designation indicating that all pertinent European Community legal requirements for a medical device have been met enabling the manufacture and sale of the device in any member country.

G. "*COBE Heart-Lung Machine*" means any Heart-Lung Machine researched, developed, manufactured or sold by COBE.

H. "*COBE Heart-Lung Machine Assets*" means all of COBE's assets (excluding receivables, cash, securities or other liquid assets), business, goodwill and rights, as of the date this Agreement Containing Consent Order is signed by the respondent, that will be transferred to respondent through the Acquisition relating to the research, development, manufacture, marketing or sale of any COBE Heart-Lung Machine, including, but not limited to: all machinery, fixtures, equipment and other tangible property, trade names, trademarks, brand names, formulations, inventory, contractual rights, Patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, marketing and distribution information, customer lists, software, information stored on management information systems (and specifications sufficient for the Acquirer or New Acquirer to use such information) and all data, contractual rights, materials and information relating to FDA and other government or regulatory approvals relating to COBE Heart-Lung Machines. COBE Heart-Lung Machine Assets do not include purchase orders requiring delivery of all COBE Heart-Lung Machines within ninety (90) days of the date this Agreement Containing

Consent Order is accepted for public comment and inventory required to fulfill such purchase orders; lease, rental and cost per treatment contracts for COBE Heart-Lung Machines and the underlying Heart-Lung Machines and related assets; or insurance and tax rights.

I. "*Commercial Capability to Manufacture*" means the practical ability to manufacture (including by subcontracting other than to Respondent or COBE) COBE Heart-Lung Machines whether or not any are actually sold.

J. "*Commission*" means the Federal Trade Commission.

K. "*Contract Manufacture*" or "*Contract Manufacturing*" means the manufacture and supply of COBE Heart-Lung Machines pursuant to a Divestiture Agreement with the Acquirer or New Acquirer.

L. "*Cost*" means the cost of manufacturing an item, as determined by Generally Accepted Accounting Principles, including the actual cost of raw materials, direct labor, reasonably allocated factory overhead and reasonable, actual contracted services. The cost of raw materials and direct labor is the actual cost of materials and labor consumed to manufacture the item.

M. "*Designee*" means any entity that will manufacture COBE Heart-Lung Machines for the Acquirer or New Acquirer.

N. "*Divestiture Agreement*" means the Asset Purchase Agreement dated April 23, 1999 between Baxter Healthcare Corporation and Sorin Biomedica, S.p.A., the Supplemental Agreement dated April 23, 1999 between Baxter Healthcare Corporation and Sorin Biomedica, S.p.A., and Amendment No. 1 to Supplemental Agreement dated April 27, 1999 between Baxter Healthcare Corporation and Sorin Biomedica, S.p.A., or any other agreement(s) between respondent and the Acquirer or New Acquirer, as applicable.

O. "*Divestiture Trustee*" means the trustee appointed pursuant to paragraph IV. of this order.

P. "*FDA*" means the United States Food and Drug Administration.

Q. "*Heart-Lung Machine*" means any durable machine used to shunt blood away from the heart, oxygenate the blood and return the blood to the body, but does not include any other components of the perfusion system, such as tubing, connectors, oxygenators, reservoirs and filters.

R. "*Interim Trustee*" means the trustee appointed pursuant to paragraph III. of this order.

S. "*Material Confidential Information*" means competitively sensitive or proprietary information not independently known to an

entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, Patents, technologies, processes or other trade secrets.

T. "*New Acquirer*" means the entity to whom the Divestiture Trustee shall divest the COBE Heart-Lung Machine Assets pursuant to paragraph IV. of this order.

U. "*Patent*" means the patent and patent rights, patent applications, patents of addition, re-examinations, reissues, extensions, granted supplementary protection certificates, substitutions, confirmations, registrations, revalidations, revisions, additions and the like, of or to said patent and patent rights and any and all continuations and continuations-in-part and divisionals.

V. "*Relevant Area*" means any country, including but not limited to the United States, where COBE sells COBE Heart-Lung Machines as of the date of the Acquisition.

W. "*Regulatory Approvals*" means approval by the FDA, approval to receive a CE Mark, and any other governmental or regulatory approvals held by COBE for any COBE Heart-Lung Machine as of the date of the Acquisition.

X. "*Reimbursable Costs*" means the reasonable, direct, out-of-pocket expenses incurred by respondent in providing referenced assistance.

II.

It is further ordered, That:

A. Respondent shall divest absolutely and in good faith the COBE Heart-Lung Machine Assets as a competitively viable, ongoing product line: (1) to Baxter Healthcare Corporation in accordance with the Divestiture Agreement, within ten (10) business days after the date the Commission accepts the Agreement Containing Consent Order for public comment, or (2) at no minimum price to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, within one hundred eighty (180) days of the date on which this Agreement Containing Consent Order is accepted for public comment; provided, however, that respondent may negotiate with the Acquirer for a non-exclusive license to, and an agreement not to assert against respondent, any divested intellectual property rights

related to the COBE Heart-Lung Machines currently being researched and developed but not manufactured or sold by COBE.

B. The purpose of this order is to ensure the continued use of the COBE Heart-Lung Machine Assets in the same business in which they are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Respondent shall comply with all terms of the Divestiture Agreement with Baxter Healthcare Corporation and such agreement is incorporated by reference into this order and made a part hereof as Confidential Appendix I. If the COBE Heart-Lung Machine Assets are divested pursuant to paragraph II.A.(2) of this order, respondent shall comply with all terms of the resulting Divestiture Agreement with the Acquirer and such agreement shall be deemed incorporated by reference into this order. Any failure by respondent to comply with the requirements of such agreement(s) shall constitute a failure to comply with this order.

D. Respondent's Divestiture Agreement with the Acquirer or the New Acquirer, as applicable, shall include the following provisions, and respondent shall commit to satisfy the following:

1. Respondent shall Contract Manufacture and deliver to the Acquirer or the New Acquirer in a timely manner and under reasonable terms and conditions a supply of COBE Heart-Lung Machines, specified in the Divestiture Agreement at Cost or such other price specified in the Divestiture Agreement with the approval of the Commission for a period not to exceed two (2) years from the date of the Divestiture Agreement, or three (3) months after the date the Acquirer or New Acquirer obtains all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines and obtains the Commercial Capability to Manufacture, whichever is earlier; provided, however, that the two (2) year period may be extended by the Commission in three (3) month increments for a period not to exceed two (2) years. Provided further, however, three (3) months after the Acquirer obtains all necessary Regulatory Approvals and obtains the Commercial Capability to Manufacture COBE Heart-Lung Machines for any Relevant Area, Respondent shall have no further obligation to Contract Manufacture COBE Heart-Lung Machines for sale in that Relevant Area.

2. After respondent commences delivery of COBE Heart-Lung Machines to the Acquirer or the New Acquirer pursuant to the Divestiture Agreement and for the term of the Contract Manufacturing arrangement referred to in paragraph II.D.1. of this order, respondent shall produce COBE Heart-Lung Machines only for fulfillment of the purchase orders described in Definition I.H. or for sale to the Acquirer or the New Acquirer.

3. Respondent shall make representations and warranties that the COBE Heart-Lung Machines supplied pursuant to the Divestiture Agreement meet all Regulatory Approval specifications. Respondent shall agree to indemnify, defend and hold the Acquirer or the New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses resulting from the failure of a COBE Heart-Lung Machine supplied by respondent to the Acquirer or New Acquirer pursuant to the Divestiture Agreement to meet regulatory specifications. This obligation shall be contingent upon the Acquirer or the New Acquirer giving respondent prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting respondent to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel; provided, however, any such defense and/or settlement shall be consistent with the obligations assumed by respondent under this order. This obligation shall not require respondent to be liable for any negligent act or omission of the Acquirer or the New Acquirer or for any representations and warranties, express or implied, made by the Acquirer or the New Acquirer that exceed the representations and warranties made by respondent to the Acquirer or the New Acquirer.

4. Respondent shall make representations and warranties that respondent will hold harmless and indemnify the Acquirer or New Acquirer for any liabilities or loss of profits resulting from the failure by respondent to deliver the COBE Heart-Lung Machines in a timely manner as required by the Divestiture Agreement unless respondent can demonstrate that its failure was entirely beyond the control of respondent and in no part the result of negligence or willful misconduct on respondent's part.

5. During the time that respondent is Contract Manufacturing COBE Heart-Lung Machines for the Acquirer or the New Acquirer, upon request by the Acquirer, New Acquirer or the Interim Trustee,

respondent shall make available to the Interim Trustee all records that relate to the manufacture of the COBE Heart-Lung Machines.

6. Upon reasonable notice and request from the Acquirer or the New Acquirer to respondent, respondent shall use all commercially reasonable efforts to provide in a timely manner: (a) assistance and advice to enable the Acquirer or the New Acquirer (or the Designees of the Acquirer or New Acquirer) to obtain all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines; (b) assistance to the Acquirer or New Acquirer (or the Designees thereof) as is necessary to enable the Acquirer or New Acquirer (or the Designees thereof) to manufacture COBE Heart-Lung Machines in substantially the same manner and quality employed or achieved by COBE at the time of the Acquisition; and (c) consultation with knowledgeable employees of respondent and training, at the request of and at the facility of the Acquirer's or the New Acquirer's choosing, until the Acquirer or New Acquirer (or the Designees thereof) receive all necessary Regulatory Approvals or abandon their efforts to obtain all necessary Regulatory Approvals and until the Acquirer or the New Acquirer obtains the Commercial Capability to Manufacture or abandons its efforts to obtain the Commercial Capability to Manufacture, reasonably sufficient to satisfy the management of the Acquirer or New Acquirer that its personnel (or the Designees' personnel) are adequately trained in the manufacture of the COBE Heart-Lung Machines. Such assistance shall include on-site inspections, at the Acquirer's or New Acquirer's request, of the plant that is the specified source of supply of the Contract Manufacturing. Respondent may require reimbursement from the Acquirer or New Acquirer for all its Reimbursable Costs incurred in providing the services required by this paragraph II.D.6.

7. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission within ten (10) days of signing the Divestiture Agreement a certification attesting to the good faith intention of the Acquirer or the New Acquirer, including a plan by the Acquirer or the New Acquirer, to obtain in an expeditious manner all necessary Regulatory Approvals to manufacture and sell the COBE Heart-Lung Machine and to obtain the Commercial Capability to Manufacture.

8. The Divestiture Agreement shall require the Acquirer or the New Acquirer to submit to the Commission and Interim Trustee periodic verified written reports, setting forth in detail the efforts of

the Acquirer or the New Acquirer to sell COBE Heart-Lung Machines obtained pursuant to the Divestiture Agreement and to obtain all Regulatory Approvals necessary to manufacture and sell COBE Heart-Lung Machines and the efforts of the Acquirer or the New Acquirer to obtain the Commercial Capability to Manufacture. The Divestiture Agreement shall require the first such report to be submitted sixty (60) days from the date the Divestiture Agreement is approved by the Commission and every sixty (60) days thereafter until all necessary Regulatory Approvals are obtained by the Acquirer or the New Acquirer to manufacture and sell COBE Heart-Lung Machines and until the Acquirer or the New Acquirer obtains the Commercial Capability to Manufacture. The Divestiture Agreement shall also require the Acquirer or the New Acquirer to report to the Commission and the Interim Trustee within ten (10) days of its ceasing the sale of COBE Heart-Lung Machines obtained pursuant to the Divestiture Agreement for any time period exceeding sixty (60) days; abandoning its efforts to obtain all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines; or abandoning efforts to obtain the Commercial Capability to Manufacture. The Divestiture Agreement shall require the Acquirer or New Acquirer to provide the Interim Trustee access to all records and all facilities that relate to its efforts, pursuant to the Divestiture Agreement, to sell or manufacture COBE Heart-Lung Machines or obtain all necessary Regulatory Approvals.

9. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or the New Acquirer: (a) voluntarily ceases for sixty (60) days or more the sale of, or otherwise fails to pursue good faith efforts to sell, COBE Heart-Lung Machines prior to obtaining all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines or prior to obtaining the Commercial Capability to Manufacture; (b) fails to pursue good faith efforts to obtain all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines; or (c) fails to obtain all necessary Regulatory Approvals of its own to manufacture and sell COBE Heart-Lung Machines or to obtain the Commercial Capability to Manufacture within two (2) years from the date of the Divestiture Agreement; provided, however, that the two (2) year period may be extended by the Commission in three (3) month increments for a period not to exceed two (2) years if it appears that

such Regulatory Approvals are likely to be obtained or the Acquirer or the New Acquirer is likely to obtain the Commercial Capability to Manufacture such products within such extended time period.

10. The Divestiture Agreement shall provide that if it is terminated, the COBE Heart-Lung Machine Assets shall revert back to respondent and shall be held separate, and the COBE Heart-Lung Machine Assets shall be divested by the Divestiture Trustee to a New Acquirer pursuant to the provisions of paragraph IV. of this order.

E. During the pendency of any Patent dispute that: (1) challenges or seeks to render invalid any of the Patents divested pursuant to this order; and (2) could affect the manufacture or sale of COBE Heart-Lung Machines, Respondent shall cooperate, at its own expense, in the defense of rights it has transferred to the Acquirer or New Acquirer.

F. Within five (5) business days after the Acquisition or after respondent signs the Divestiture Agreement, whichever is later, respondent shall provide the Acquirer or New Acquirer with a complete list of all employees who are engaged in research, development, manufacture, marketing, or sales of any COBE Heart-Lung Machine on the date of the Acquisition. The list shall state each such individual's name, position, address, business telephone number, or if no business telephone number exists, a home telephone number, if available and with the consent of the employee, and a description of the duties and work performed by the individual in connection with the COBE Heart-Lung Machine Assets. Respondent shall provide the Acquirer or New Acquirer the opportunity to enter into employment contracts with such individuals provided that such contracts are contingent upon the Commission's approval of the Divestiture Agreement.

G. Within five (5) business days after the Acquisition or after respondent signs the Divestiture Agreement, whichever is later, and subject to the consent of the employees, respondent shall provide the Acquirer or New Acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in paragraph II.F. of this order to the extent possible under applicable laws. For the term of the Contract Manufacturing arrangement and two (2) months thereafter, respondent shall provide the Acquirer or New Acquirer with a further opportunity to interview such individuals and negotiate employment contracts with them.

H. Respondent shall provide all employees identified in paragraph II.F. of this order with reasonable financial incentives to continue in their employment positions in order that such employees may be in a position to accept employment with the Acquirer or New Acquirer. Such incentives shall include, but not be limited to, continuation of all employee benefits offered by respondent, and vesting of all pension benefits (as permitted by law) for each such employee who accepts an offer of employment from the Acquirer or New Acquirer within one hundred eighty (180) days after the Agreement Containing Consent Order is accepted for public comment by the Commission.

I. Respondent shall not enforce any confidentiality or non-compete restrictions relating to the COBE Heart-Lung Machine Assets that apply to any employee identified in paragraph II.F. who accepts employment with the Acquirer or New Acquirer, but respondent may enforce all other rights thereunder relating to any other products or services.

J. For a period of one (1) year commencing on the date of the individual's employment by the Acquirer or New Acquirer, respondent shall not solicit for employment any of the individuals identified in paragraph II.F. of this order who accept employment with the Acquirer or New Acquirer, unless such individual has been separated from employment by the Acquirer or New Acquirer against that individual's wishes.

K. Prior to divestiture and during the term of the Contract Manufacturing arrangement, respondent shall not transfer, without the consent of the Acquirer or New Acquirer, any of the individuals identified in paragraph II.F. of this order to any other position.

L. While the obligations imposed by this order are in effect, respondent:

1. Shall take such actions as are necessary to: (a) maintain all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines; (b) maintain the viability and marketability of the COBE Heart-Lung Machine Assets consistent with general practices in the medical devices industry, as well as all tangible assets, including respondent's facilities, used to manufacture and sell COBE Heart-Lung Machines; and (c) prevent the destruction, removal, wasting, deterioration or impairment of the COBE Heart-Lung Machine Assets and the plant that is the specified source of

supply of the Contract Manufacturing, except for ordinary wear and tear; and

2. Shall not receive or have access to any Material Confidential Information about the COBE Heart-Lung Machines, except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations or litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this order.

III.

It is further ordered, That:

A. At any time after respondent signs the Agreement Containing Consent Order in this matter, the Commission may appoint an Interim Trustee to ensure that respondent and the Acquirer or New Acquirer expeditiously perform their respective responsibilities as required by this order and the Divestiture Agreement approved by the Commission.

B. If an Interim Trustee is appointed pursuant to paragraph III.A. of this order, respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee:

1. The Commission shall select the Interim Trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.

2. The Interim Trustee shall have the power and authority to monitor respondent's compliance with the terms of this order and with the terms of the Divestiture Agreement, and shall exercise such power and authority in a manner consistent with the purposes of this order and in consultation with the Commission.

3. Within ten (10) days after appointment of the Interim Trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor respondent's compliance with the terms of this order and with the Divestiture Agreement, and to monitor the compliance of the Acquirer or New Acquirer under the Divestiture Agreement.

4. The Interim Trustee shall serve until such time as the Acquirer or the New Acquirer has received all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines and has obtained the Commercial Capability to Manufacture.

5. The Interim Trustee shall have full and complete access to respondent's personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, importation, distribution and sale of COBE Heart-Lung Machines, or to any other relevant information, as the Interim Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the manufacture of COBE Heart-Lung Machines and all materials and information relating to Regulatory Approvals. Respondent shall cooperate with any reasonable request of the Interim Trustee. Respondent shall take no action to interfere with or impede the Interim Trustee's ability to monitor respondent's compliance with this order and the Divestiture Agreement.

6. The Interim Trustee shall serve, without bond or other security, at the expense of respondent, on such reasonable and customary terms and conditions as the Commission may set. The Commission may, among other things, require the Interim Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Interim Trustee's duties. The Interim Trustee shall have authority to employ, at the expense of respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

7. Respondent shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Trustee.

8. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Trustee in the same manner as provided in paragraph III.B.1. of this order.

9. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this order and the Divestiture Agreement.

10. The Interim Trustee shall obtain and evaluate reports submitted to it by the Acquirer or the New Acquirer with respect to the performance of respondent's obligations under the Divestiture Agreement and with respect to the efforts of the Acquirer or the New Acquirer to obtain all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines and to obtain the Commercial Capability to Manufacture. The Interim Trustee shall report to the Commission in writing concerning compliance by respondent and the Acquirer or New Acquirer with the provisions of this order and the Divestiture Agreement within ten (10) days from the date the Divestiture Agreement or trust agreement is approved, whichever is later, and every sixty (60) days thereafter until the Acquirer or New Acquirer obtains, or abandons efforts to obtain, all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines in the United States and to obtain the Commercial Capability to Manufacture or until such time as the Interim Trustee's term ends pursuant to paragraph III.B.4. of this order.

C. If the Commission terminates the Divestiture Agreement pursuant to paragraph II.D.9. of this order, the Commission may direct the Divestiture Trustee to seek a New Acquirer, as provided for in paragraph IV. of this order.

IV.

It is further ordered, That:

A. If respondent fails to divest absolutely and in good faith, and with the Commission's prior approval, the COBE Heart-Lung Machine Assets and to comply with the requirements of paragraph II. of this order, or if the Acquirer abandons its efforts or fails to obtain all necessary Regulatory Approvals or obtain the Commercial Capability to Manufacture in the manner set out in paragraph II.D.9., and if the executed Divestiture Agreement between respondent and

the Acquirer has been terminated by the Commission pursuant to paragraph II.D.9., then the Commission may appoint a Divestiture Trustee to divest the COBE Heart-Lung Machine Assets and execute a new Divestiture Agreement that satisfies the requirements of paragraph II. of this order. If the COBE Heart-Lung Machine Assets are divested pursuant to this paragraph IV.A., respondent shall comply with all terms of the resulting Divestiture Agreement with the New Acquirer and such agreement shall be deemed incorporated by reference into this order. Any failure by respondent to comply with the requirements of such agreement(s) shall constitute a failure to comply with this order. The Divestiture Trustee may be the same person as the Interim Trustee and will have the authority and responsibility to divest the COBE Heart-Lung Machine Assets absolutely and in good faith, and with the Commission's prior approval. Neither the decision of the Commission to appoint the Divestiture Trustee, nor the decision of the Commission not to appoint the Divestiture Trustee, to divest any of the assets under this paragraph IV.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to paragraph IV.A. of this order to divest the COBE Heart-Lung Machine Assets to a New Acquirer, respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture Trustee, subject to the consent of respondent, which consent shall not be unreasonably withheld. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed Divestiture Trustee, respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the COBE Heart-Lung Machine Assets to a New Acquirer

pursuant to the terms of this order and to negotiate the terms of the Divestiture Agreement with the New Acquirer pursuant to the terms of this order, which Divestiture Agreement shall be subject to the prior approval of the Commission.

3. Within ten (10) days after appointment of the Divestiture Trustee, respondent shall execute a trust agreement (or amend the existing trust agreement) that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the COBE Heart-Lung Machine Assets to a New Acquirer and to negotiate a Divestiture Agreement with the New Acquirer.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph IV.B.3. of this order to divest the COBE Heart-Lung Machine Assets and to enter into a Divestiture Agreement with the New Acquirer that satisfies the requirements of paragraph II. of this order. If, however, at the end of the applicable twelve (12) month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of respondent related to the manufacture, distribution, or sale of the COBE Heart-Lung Machine Assets or to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.

6. The Divestiture Trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each Divestiture Agreement or other contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price and the Divestiture Trustee's obligation to expeditiously accomplish the remedial purpose of the order; to assure that respondent enters into a Divestiture Agreement that complies

with the provisions of paragraph II.D.; to assure that respondent complies with the remaining provisions of paragraph IV. of this order; and to assure that the New Acquirer obtains all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines and obtains the Commercial Capability to Manufacture such products. The divestiture shall be made to, and the Divestiture Agreement executed with, the New Acquirer in the manner set forth in paragraph II. of this order; provided, however, if the Divestiture Trustee receives bona fide offers from more than one (1) acquiring entity, and if the Commission determines to approve more than one (1) such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.

7. The Divestiture Trustee shall serve, without bond or other security, at the expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondent. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating a New Acquirer and assuring compliance with this order.

8. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in paragraph IV.A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this order.

11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the COBE Heart-Lung Machine Assets.

12. The Divestiture Trustee shall report in writing to respondent and the Commission every two (2) months from the date the Divestiture Trustee is appointed concerning his or her efforts to divest the relevant assets, respondent's compliance with the terms of this order, and the New Acquirer's efforts to obtain all necessary Regulatory Approvals to manufacture and sell COBE Heart-Lung Machines and to obtain the Commercial Capability to Manufacture such products.

V.

It is further ordered, That within thirty (30) days of the date this order becomes final and every ninety (90) days thereafter until respondent has fully complied with the provisions of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this order, including a description of all substantive contacts or negotiations for accomplishing the divestiture and entering into the Divestiture Agreement required by this order, including the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the Divestiture Agreement required by paragraph II. of this order.

VI.

It is further ordered, That, for the purpose of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to respondent, respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to any facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview officers or employees of respondent, who may have counsel present, regarding such matters.

VII.

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

IN THE MATTER OF
APPLE COMPUTER, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3890. Complaint, July 29, 1999--Decision, July 29, 1999

This consent order, among other things, prohibits Apple Computer, Inc., a California-based manufacturer and distributor of personal computers and other personal computer hardware and software products, from misrepresenting the terms of any technical support service offered in conjunction with the sale of such products. The consent order requires the respondent to provide access to technical support personnel at no charge to consumers who have been promised such support. The consent order also provides a refund to each such consumer who has paid to the respondent a fee for technical support services.

Participants

For the Commission: *Matthew Gold, Linda Badger, and Jeffrey Klurfeld.*

For the respondent: *Barry Cutler, Baker & Hostetler, Washington, D.C. and Mike Rubin and Larry Lowe, in-house counsel, Cupertino, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Apple Computer, Inc., a corporation ("Apple" or "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:

1. Respondent Apple is a California corporation with its principal office or place of business at One Infinite Loop, Cupertino, California.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed personal computers, printers, scanners and other computer products to the public. From approximately September 1, 1992, until approximately April 1, 1996, Apple promised United States purchasers of these products that live, toll-free technical support would be available at no charge for as long as the purchaser owned the product.
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.

4. Respondent has disseminated or has caused to be disseminated advertisements for Macintosh personal computers, Apple printers and Apple scanners, including but not necessarily limited to the attached Exhibits A through D. These advertisements contain the following statements and depictions:

A. "We build all our products to be easy to use, but if you ever need help, rest assured. Apple technicians are here with service and support, on our toll-free service hotline, 1 800 SOS-APPL."

[Exhibit A (direct mail advertisement)]

B. "A PARENT'S GUIDE TO COMPUTERS
SERVICE AND SUPPORT

YOU'LL FIND EVERYTHING you want in a Performa: just the right hardware configuration, easy setup, and bundled software to make you productive right away. You also get toll-free technical support over the phone for as long as you own your Performa. No matter what your problem, a customer support representative will talk you through each step in the solution."

[Exhibit B (Special advertising section insert: "A Parent's Guide to Computers.")]

C. "Apple Resource Guide

We're Here When You Need Us

Most important, Apple Assurance is part of every product Apple makes. Through Apple Assurance you have toll-free telephone access to Apple when you have questions about setting up and using your Apple product, and in case you require hardware repairs.

Every Apple product includes Apple Assurance. Apple Assurance includes 'up and running' support for as long as you own your Apple product. Trained staff members are ready to help you with the following topics:

- Installation and setup
- Compatibility with third-party hardware and software products
- Referrals for support of third-party products
- Hardware and software troubleshooting
- Dispatch of a service representative to your home should your system need to be repaired

User Assistance is open from Monday through Friday 6:00 A.M. to 6:00 P.M., Saturday 8:00 A.M. to 6:00 P.M., and Sunday 8:00 A.M. to 5:00 P.M. Pacific time."

[Exhibit C (Product insert: "Apple Resource Guide")]

D. "We'll help keep you up and running. . .

For as long as you own your Apple product.

Thank you for purchasing this Apple product. With your purchase you receive 'up and running' support from Apple as long as you own your Apple product. Specially trained staff members are ready to assist you in installation and set up,

compatibility, hardware and software troubleshooting, and product referrals.... We can provide you with:

Toll-Free User Assistance

"We give you direct access to our specially trained staff! They can assist you with information on:

- Installation
- Compatibility
- Configuration
- Basic product use

User Assistance is available Monday through Friday excluding holidays. Hours in the United States are 6 a.m. to 6 p.m. Pacific time.

Call User Assistance at:

1-800-SOS-APPL (1-800-767-2775)"

[Exhibit D (In-Box Registration Card)]

5. Through the means described in paragraph four, respondent has represented, expressly or by implication, that a consumer purchasing an Apple product would have toll-free telephone access to Apple technical support personnel, at no charge, for as long as the consumer owned the product.

6. In truth and in fact, consumers purchasing Apple products between approximately September 1, 1992, and April 1, 1996, did not have toll-free telephone access to Apple technical support personnel, at no charge, for as long as they owned the product. In October, 1997, Apple began charging these consumers a fee for access to Apple technical support personnel. Therefore, the representation set forth in paragraph five was, and is, false or misleading.

7. The acts and 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.

EXHIBIT A

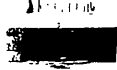
Printers

Complete your system with one of our versatile, affordable printers.

Whether you select the affordability of the StyleWriter™ II, the price/performance value of the Color StyleWriter™ Pro, or the high-end capabilities of the Personal LaserWriter™ 300 and Personal LaserWriter 320, these printers will bring your ideas to life.



StyleWriter II
 • Cost-effective ink-jet printing
 • 360 dpi laser-quality output
 • Cable & ink cartridge included
\$276



Color StyleWriter Pro
 • Affordable color printing
 • 360 dpi
 • Cable & 4 ink cartridges included
\$557



Personal LaserWriter 300
 • True 300 dpi laser printing
 • Compact, energy-efficient design
 • Cable & toner cartridge included
\$579



Personal LaserWriter 320
 • Enhanced 300 dpi laser printing
 • Adobe® PostScript™ Level 2
 • Cable & toner cartridge included
\$843

The Apple Educator Advantage

Since 1987, Apple has offered educators special discounts and great deals on computers to use at home. So all the advantages of Macintosh are within the reach of educators like you — teachers, principals, school board members, PTA/PTO executive officers, and AFT/NAEYC members.* And with new, faster ordering and complete systems created just for you, bringing home the perfect new Macintosh has never been easier.

Offer expires July 17, 1994, so call today.

1 800 959-2775 ext. 503

24 hours a day, 7 days a week

5 reasons to buy direct from Apple

It's a great deal.

When you order your home computer through the Apple Educator Advantage program, you get special discounts on the latest computers and software, chosen just for educators like you.

It's easy.

You know Apple products are easy to use, and now they're easy to get. We're here 24 hours a day, 7 days a week. Just call 1 800 959-2775, ext. 503, with your credit card. We accept Visa, MasterCard, American Express, and Discover.

It's complete.

Apple experts have put together everything you need, from powerful computers to exciting software chosen just for you. And now Apple also offers disability solutions through Educator Advantage.

It's fast.

Pending product availability, now you can choose speedy next-day delivery, to get your new Macintosh right away. Or you may prefer regular UPS service, for delivery in 3 to 7 days. Just let us know, and your new Macintosh will be on your doorstep — as fast as you need it.

It's dependable.

We build all our products to be easy to use, but if you ever need help, rest assured. Apple technicians are here with service and support, on our toll-free service hotline, 1 800 SOS-APPLE.



Be one of the first to order a computer system or printer and receive HomePublisher for only \$29*



© 1994 Apple Computer, Inc. All rights reserved. Apple, the Apple logo, Macintosh, System Software, Personal LaserWriter, PowerBook, Quadra, and IIx are registered trademarks of Apple Computer, Inc. in the United States and other countries. Education and pricing, Macintosh PC Exchange, Macintosh Plus, Macintosh serial software, Display and the family of Apple Computer, Inc. labels and PostScript are trademarks of Apple Computer, Inc. HomePublisher is a trademark of International Business Machines Corporation under license agreement. Investment is a trademark of Visa Corporation. All other brand names are trademarks of their respective companies. Not for institutional purchase. Limited to one system and one printer per academic year (July 1 through June 30). Offer good while supplies last. Offer expires July 17, 1994. *One 1988 model of computer system or printer will be eligible to purchase Apple HomePublisher for \$29. All purchases must be a working 10-hour or more per week. Products and prices subject to change without notice. Taxes are subject to product availability. All sales are final.

EXHIBIT B

A PARENT'S GUIDE TO COMPUTERS

EVERYTHING A NEW COMPUTER SHOPPER NEEDS TO KNOW

- What you can do with a computer
- How to choose a computer
- The exciting new world of multimedia
- Useful computer terms

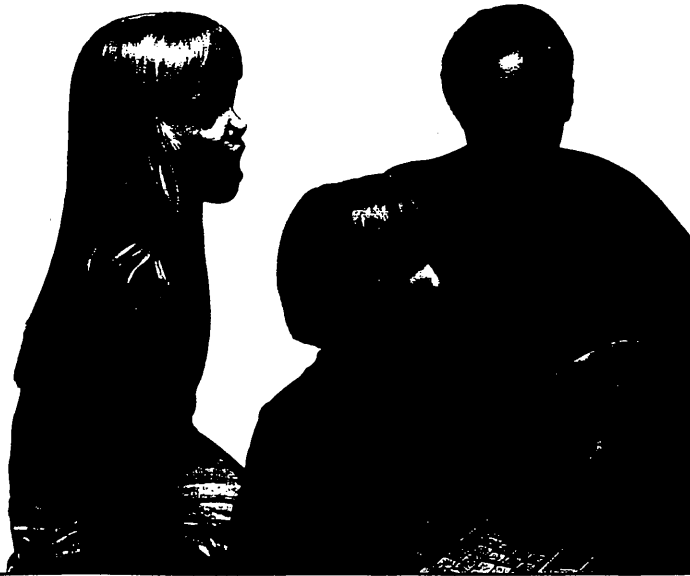


EXHIBIT B

THE MACINTOSH PERFORMA

THE PERFECT CHOICE

THE POWER AND SIMPLICITY of the Mac makes it the perfect choice for everyone in the family. More students use Apple personal computers than any other brand, so chances are your kids are already using them in school. The Macintosh's easy-to-use point-and-click operation opens computing to any kid—or adult—who can use a mouse.

The Performa family is designed to be right at home with your family. It's easy to buy, easy to set up, and easy to use. And each Performa can run any of the literally thousands of educational, business, home productivity, and entertainment programs available.

EVERYTHING YOU NEED TO GET STARTED

A PERFORMA MAKES computer shopping as easy as can be. All you have to decide is which model best suits your needs. Apple has done all the rest. Everything you need is in one box: the computer, a color monitor, a keyboard, a mouse, a fax/modem, up to 16 software programs, digital sound, and speaker(s). Some models even have a

CD-ROM drive built right in.

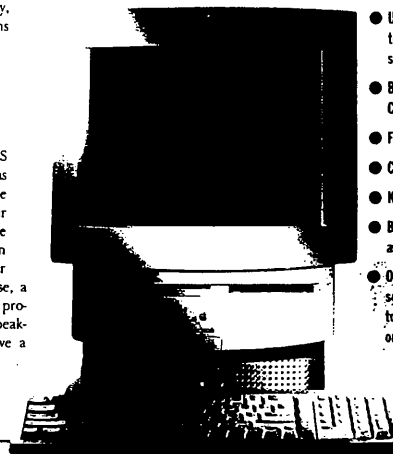
Your work and play springs to life in brilliant color on the Performa's high-resolution color monitor. Its 14-inch screen gives you plenty of workspace.

The built-in fax/modem not only can connect you to the vast realm of telecommunications and on-line services, but you can also send faxes directly from your computer to any fax machine.

Every Performa can grow with your family. Each one has

enough memory, power, and storage space to serve your family for years. However, should you decide you want to upgrade in the future, you can expand your Performa's RAM, hard drive storage, and even microprocessor to keep step with improvements in technology (such as the hot new PowerPC chip). Adding another hard drive, scanner, or CD-ROM drive is as simple as plugging one into a socket in back of the computer.

A COMPLETE COMPUTER SYSTEM:



- Up to 16 top-of-the-line software programs
- Built-in or optional CD-ROM drive
- Fax/modem
- Color monitor
- Keyboard and mouse
- Built-in digital sound and speaker(s)
- One year of free service, including toll-free tech support and a one-year warranty

Complaint

128 F.T.C.

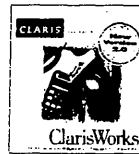
EXHIBIT B

EASY TO SET UP

PERFORMAS ARE INCREDIBLY easy to set up. Simply take the computer out of the box, attach the keyboard and mouse, connect the monitor (it's already connected in some models), plug in the power cord, and turn it on. A "Welcome Mat" right inside the box shows a clear diagram of the complete setup, so you never even have to open a manual.

SOFTWARE FOR THE ENTIRE FAMILY

EACH MACINTOSH PERFORMA comes with several hundred dollars worth of software already installed and ready to run. There's something for everyone in the family. ClarisWorks, Quicken, American Heritage Dictionary, and America Online are just some of the software programs featured in various Performa models.



ClarisWorks includes a word processor, a graphics program, a spreadsheet, and a database, all in one. Your daughter can write her novel, your son can create electronic masterpieces, Dad can calculate the family investment strategies, and Mom can keep accurate tabs on her business contacts.



Quicken, the best-selling small-business and personal finance package, makes managing your finances as simple as entering transactions in your checkbook. It organizes your checking, savings, investments, loans, credit cards, assets and liabilities, so you'll always know exactly where you stand. Quicken can even analyze your financial picture with colorful graphs and flexible reports.

American Heritage Dictionary puts a wealth of information at your fingertips, and they'll never leave the Performa's keyboard. Find exactly the right fact, word, or spelling while you're working on a document, without losing a moment of your creative momentum!



America Online is perhaps the most Mac-friendly of the major on-line services. Take advantage of the ten hours of free connect time that comes with your Performa to explore this incredible service. There's even a special forum called Club Performa in which you can communicate directly with Apple about your new computer.

SERVICE AND SUPPORT

YOU'LL FIND EVERYTHING you want in a Performa: just the right hardware configuration, easy setup, and bundled software to make you productive right away. You also get toll-free technical support over the phone for as long as you own your Performa. No matter what your problem, a customer support representative will talk you through each step in the solution.

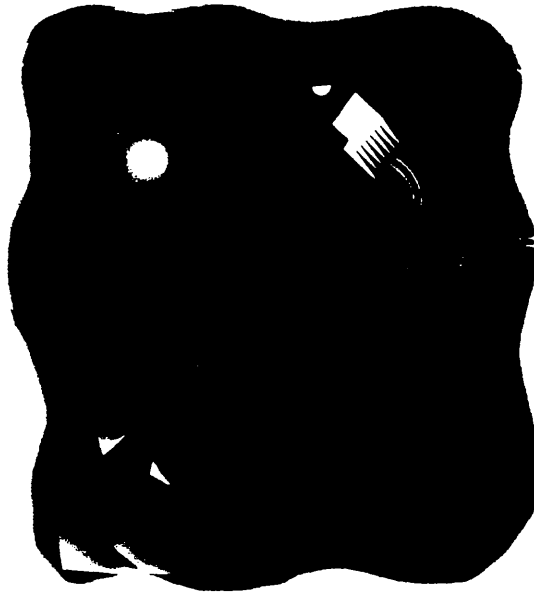
And during the first year, if you're really stuck, Apple will send a technician right to your home, within 48 hours of your call! You also get a one-year limited warranty on your Performa's parts and workmanship.

**For More Information**

For your nearest Performa retailer, call:

1-800-538-9696

(extension 225)



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APPLE3

Apple Resource Guide

800# Support, Service, and Training

Includes your Apple One-Year Limited Warranty and Apple Software License Agreement

Complaint

128 F.T.C.

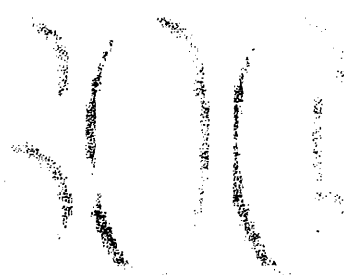
EXHIBIT C

We're Here When You Need Us

Thank you for purchasing an Apple computer. At Apple, we build powerful, sophisticated products that are surprisingly easy to use, right out of the box. We want your computing experience to be pleasant and successful all along the way, so we've developed comprehensive customer services that are just as easy to use as our products.

Most important, Apple Assurance is part of every product Apple makes. Through Apple Assurance, you have toll-free telephone access to Apple when you have questions about setting up and using your Apple product, and in case you require hardware repairs. In addition, we pack comprehensive support materials into every box. These include award-winning instruction and reference manuals, interactive computer-based training programs, and on-line help. We have also established strong relationships with service, support, and training providers who have the expertise to meet your specialized support needs.

This guide outlines the services, products, and technologies we've developed to support you now and in the future. These programs reflect one of our strongest commitments to you as an Apple owner. We want to make sure our easy-to-use computers stay that way. If you ever need us, we'll be here.



1

How To Find Us

Product Support—Questions About Setting Up and Using Your Apple Computer

For user assistance beyond what is provided in the Setup poster, reference manual, and troubleshooting section of the manual

1-800-SOS-APPL (1-800-767-2775)

For help with non-Apple software

Call the manufacturer directly

For referrals to user groups, which provide help, training, and other services

1-800-538-9696, ext. 500

Hardware Repair Services

For repair services during your one-year warranty

See your retailer or call 1-800-SOS-APPL (1-800-767-2775)

For extended service agreements and other service options after your one-year warranty has expired

See your retailer or call 1-800-538-9696

For the name of an Apple Authorized Service Provider

1-800-538-9696, ext. 525

Making the Most of Your Performance

For referrals to Apple Training Alliance members

1-800-732-3131, ext. 400

For information about Worldwide Disability Solutions

(408) 974-7910 or

(408) 974-7911 (TDD)

Customer Relations


To speak with an Apple representative about customer relations concerns

1-800-776-2333

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APPLE3

EXHIBIT C

Product Support

When you have a question, we suggest that before calling Apple, you check the materials included with your product. Apple's award-winning product manuals provide step-by-step instructions, organized so that you can quickly and easily find the information you need. Or you might check the Setup poster, Glossary, or Troubleshooting section of the reference manual. If you have a question about software, you can often find an answer by clicking the Balloon Help icon () at the upper-right corner of the menu bar and choosing Show Balloons, or by checking the reference manual provided with the application program you're using.

User Assistance

Every Apple product includes Apple Assurance. Apple Assurance provides "up-and-running" support for as long as you own your Apple product. Trained staff members are ready to help you with the following topics:

- Installation and setup
- Compatibility with third-party hardware and software products
- Referrals for support of third-party products
- Hardware and software troubleshooting
- Dispatch of a service representative to your home should your system need to be repaired

User Assistance is open from Monday through Friday 6:00 A.M. to 6:00 P.M., Saturday 8:00 A.M. to 6:00 P.M., and Sunday 8:00 A.M. to 5:00 P.M. Pacific time.

To call User Assistance:
1-800-SOS-APPLE (1-800-767-2775).

Questions About Non-Apple Software:
Your questions are best addressed to the manufacturer of the application program you're using. For assistance with specific programs, please call the software company directly—the phone number is generally listed in the front of the program's reference manual. Apple does not provide support for other companies' software programs.

Club Performa

By using the modem included with your Performa, you can now connect to Club Performa on America OnLine—a great source of answers to frequently asked questions...even questions about software made by other companies!

America OnLine also offers electronic access to the latest news, weather, stock information, special interest groups and more! Refer to the most updated encyclopedia or find out about special Apple OnLine events and activities. You will even be able to talk to other computer users across the nation about whatever's on your mind or your computer.

For more information on Club Performa, please refer to the brochure included with your Performa.

Apple Product Information

Apple Assurance includes access to Apple's automated product information system, which can provide you with information on most Apple products, 24 hours a day, 7 days a week. You can also have product specifications sent

To access Apple Product Information:
1-800-SOS-APPLE (1-800-767-2775).

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APPLE3

Complaint

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EXHIBIT D



Product Registration.
Toll-Free User Assistance.
Details Inside.

We'll help
keep you up
and running...

000020
APPLE3



EXHIBIT D

EXHIBIT D

11-11111
APPLE3

For as long as you own your Apple product.

Thank you for purchasing this Apple product. With your purchase you receive "up and running" support from Apple as long as you own your Apple product. Specially trained staff members are ready to assist you in installation and set up, compatibility, hardware and software troubleshooting, and product referrals. We do need to hear from you—so please fill out and return your registration card today. We can provide you with:

Toll-Free User Assistance*

We give you direct access to our specially trained staff! They can assist you with information on:

- Installation
- Compatibility
- Configuration
- Basic product use

User Assistance is available Monday through Friday excluding holidays. Hours in the United States are 6 A.M. to 6 P.M. Pacific time.

Call User Assistance at:
1-800-SOS-APPL (1-800-767-2775)

*These services are available only in the United States of America.

When calling, please be prepared to provide:

- Your name, address, and telephone number
- Your date of purchase
- Serial number, if applicable
- General information about your Macintosh system configuration

For Repair Services

Call The Apple Authorized Service provider locator number 1-800-538-9696* ext. 525 for the service provider nearest you, or call 1-800-SOS-APPL* for general repair service information.

Latest Product Improvements

We'll keep you up to the minute on major product improvements and advancements by sending you information on updates and upgrades.

News of Special Promotions

Once you answer the questions below, we can notify you of special promotions on other Apple products that can enhance your investment and suit your specific personal computing needs.

Mail your registration card today. It only takes a minute. But the benefits go on for years.

©1993 Apple Computer, Inc. Apple, the Apple logo, ImageWriter, LaserWriter, Macintosh, and StyleWriter are trademarks of Apple Computer, Inc., registered in the U.S. and other countries. AppleColor and Performa are trademarks of Apple Computer, Inc. IBM is a registered trademark of International Business Machines Corporation. MS-DOS is a registered trademark of Microsoft Corporation.

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 complaint which the Bureau of Consumer Protection 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 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 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, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, and having modified Appendix A to the order in several respects, 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 Apple Computer, Inc., is a California corporation with its principal office or place of business at One Infinite Loop, Cupertino, 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

DEFINITIONS

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

1. Unless otherwise specified, "*respondent*" shall mean Apple Computer, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

2. "*Covered product*" shall mean a product listed in Appendix A that was purchased in the United States.

3. "*Eligible person*" shall mean the original owner (or original user) of a covered product, or any member of the immediate family of such person.

4. "*Commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

I.

It is ordered, That respondent, 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, in or affecting commerce, shall not misrepresent, in any manner, expressly or by implication, the terms of any technical support service offered in conjunction with the sale of such product.

II.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, shall provide access to technical support personnel, at no charge, to each eligible person who provides the valid serial number of a covered product for as long as such person owns the covered product. Such access shall be available within the United States through a toll-free telephone number.

III.

It is further ordered, That respondent, directly or through any corporation, subsidiary, division, or other device, shall in accordance with this Part, provide a refund to each eligible person who has paid to respondent a fee for technical support services for a covered

product, and notify each such person that future technical support for the covered product will be available at no charge.

A. Within five (5) days from the date of service of this order, respondent shall compile a list containing (1) the name and last known address of each eligible person who has paid to respondent a fee for technical support services for a covered product; and (2) the total amount each such person has paid. In addition, respondent shall retain a National Change of Address System ("NCOA") licensee to update this list by processing the list through the NCOA database.

B. Within twenty (20) days of the date of service of this order, respondent shall send via first-class mail, postage prepaid, a Notice of Refund in the form set forth in Appendix B to each eligible person whose name appears on the list required by Part III.A of this order. Respondent shall credit the eligible person's credit card account for the amount reflected on the list required by Part III.A of this order, and include notification of this action in the Notice of Refund. Alternatively, respondent shall include with the Notice of Refund a refund check for the amount reflected on the list required by Part III.A of this order.

C. No information other than that contained in Appendix B shall be included in or added to the Notice of Refund, nor shall any other material be transmitted therewith, except for (1) a refund check, if appropriate; and (2) a copy of Appendix A, at respondent's discretion. The envelope containing the Notice of Refund shall be in the form set forth in Appendix C. For each mailing returned by the U.S. Postal Service as undeliverable for which respondent thereafter obtains a corrected address, respondent shall, within fifteen (15) business days after receiving the corrected address, send a Notice of Refund and, if required by Part III.B of this order, a refund check, to the corrected address.

D. For a period of one hundred twenty (120) days from the date of service of this order, respondent shall send a Notice of Refund and, if required by Part III.B of this order, a refund check, to each eligible person who: (1) paid a fee for technical support services for a covered product; (2) was not reimbursed pursuant to Part III.B; and (3) contacts respondent or the Commission in any manner. Each mailing shall be made within fifteen (15) days after respondent receives such person's name and address.

E. For a period of one hundred twenty (120) days from the date of service of this order, respondent shall provide, and adequately staff during ordinary business hours, a toll-free telephone number to answer questions and provide information relating to this refund program.

F. Within one hundred fifty (150) days of the date of service of this order, respondent shall furnish to Commission staff the following:

1. A computer print-out copy of the list required by Part III.A of this order, as well as the list in computer readable form (as set forth in Appendix D);

2. In computer readable form (as set forth in Appendix D) and in computer print-out form, a list of the names and addresses of each eligible person who was sent a Notice of Refund pursuant to Part III.B of this order, and for each name included on the list, either (a) the amount, check number and mailing date of the refund check; or (b) the amount credited to the credit card account and the mailing date of the Notice of Refund;

3. In computer readable form (as set forth in Appendix D) and in computer print-out form, a list of the names and addresses of all consumers who contacted respondent or were referred to respondent by the Commission in accordance with Part III.D of this order;

4. Copies of all correspondence and other communications to, from, or concerning all consumers who requested a refund but were refused, and the reason(s) for denying the refund;

5. All copies of the Notice of Refund returned to respondent as undeliverable; and

6. All other documents and records evidencing efforts made and actions taken by respondent to identify, locate, contact and provide refunds to consumers requesting a refund.

IV.

It is further ordered, That respondent, and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon 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.

V.

It is further ordered, That respondent, and its successors and assigns, shall deliver a copy of this order to all current and future principals and directors; to all current and future officers and managers with responsibilities or duties affecting compliance with the terms of this order; and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and, for a period of five (5) years from the date of issuance of this order, to future personnel within thirty (30) days after the person assumes such position or responsibilities.

VI.

It is further ordered, That respondent, 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 respondent learns less than thirty (30) days prior to the date such action is to take place, respondent 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.

VII.

It is further ordered, That respondent, and its successors and assigns, 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 it has complied with this order.

VIII.

This order will terminate on July 29, 2019, 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.

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APPENDIX A

APPENDIX A

<u>Name</u>	<u>Model</u>	<u>Name</u>	<u>Model</u>	<u>Name</u>	<u>Model</u>
Performa	200	PowerMac	7500	LaserWriter	11f
Performa	400	PowerMac	8100	LaserWriter	11g
Performa	405	PowerMac	8500	Personal LaserWriter	SC
Performa	410	PowerMac	9500	Personal LaserWriter	LS
Performa	430	PowerBook	145	Personal LaserWriter	NTR
Performa	450	PowerBook	150	Personal LaserWriter	300
Performa	460	PowerBook	160	Personal LaserWriter	320
Performa	466	PowerBook	165	LaserWriter	4/600
Performa	467	PowerBook	180	LaserWriter	16/600
Performa	475	PowerBook	190	Color LaserWriter	12/600
Performa	476	PowerBook Duo	210	Apple Color Printer	
Performa	550	PowerBook Duo	230	StyleWriter	1200
Performa	560	PowerBook Duo	250	StyleWriter	1500
Performa	575	PowerBook Duo	270	StyleWriter	2200
Performa	577	PowerBook Duo	280	StyleWriter	2400
Performa	578	PowerBook	520	StyleWriter	2500
Performa	580	PowerBook	540	StyleWriter II	
Performa	600	PowerBook Duo	2300	Portable StyleWriter	
Performa	630	PowerBook	5300	Apple OneScanner	
Performa	631	Messagepad		Apple Color OneScanner	
Performa	635	Messagepad	100	Apple Color OneScanner	600/27
Performa	636	Messagepad	110	Duo Dock	
Performa	637	Messagepad	120	Duo Dock II	
Performa	638	Macintosh Color Classic		Duo Dock Plus	
Performa	640	Macintosh IIfx		Duo MiniDock	
Performa	5200	Macintosh LC	475	AppleColor High-Res RGB	
Performa	5215	Macintosh LC	520	AppleVision	1710
Performa	5300	Macintosh LC	550	AppleVision	1710AV
Performa	6110	Macintosh LC	575	Apple AudioVision 14	
Performa	6112	Macintosh LC	580	Apple Basic Color	
Performa	6115	Macintosh LC	630	Apple Color Plus Display	
Performa	6116	Macintosh TV		Apple High-Res Mono	
Performa	6117	Quadra	605	Apple Multiple Scan	14
Performa	6118	Centris/Quadra	610	Apple Multiple Scan	15
Performa	6200	Quadra	630	Apple Multiple Scan	17
Performa	6205	Centris/Quadra	650	Apple Multiple Scan	1705
Performa	6214	Centris/Quadra	660	Apple Multiple Scan	20
Performa	6216	Quadra	800	Macintosh 12-inch Mono	
Performa	6218	Quadra	840	Macintosh 12-inch RGB	
Performa	6220	Quadra	950	Macintosh 16-inch Color	
Performa	6230	Macintosh LC III		Macintosh 21-inch Color	
Performa	6290	Macintosh LC III + (33MHz)		Macintosh Color 14 Display	
Performa	6300	ImageWriter II		Macintosh Portrait Display	
PowerMac	5200	LaserWriter Select	300	Macintosh Two-Page Mono	
PowerMac	5300	LaserWriter Select	310	Performa Display	
PowerMac	6100	LaserWriter Select	360	Performa Plus Display	
PowerMac	6200	LaserWriter Pro	600	QuickTake Camera	100
PowerMac	7100	LaserWriter Pro	630	QuickTake Camera	150
PowerMac	7200	LaserWriter Pro	810	QuickTake Camera for Windows 150	

NOTE: The following suffixes may appear after a product name. Together with the suffix, the product should be considered INCLUDED in this list.

Suffixes: AV; B; CD; c; ce; cs; PS

Examples: Quadra 840AV; PowerMacintosh 8100/100AV; PowerBook 145B; Performa 600CD; PowerBook 165c; PowerBook 5300ce; PowerBook 190cs; LaserWriter 4/600 PS

Decision and Order

APPENDIX B

APPENDIX B

NOTICE OF REFUND

Dear [NAME]:

Our records show that you (or a member of your immediate family) are the original owner of an Apple product listed on the reverse side of this letter and that you have made payments to Apple since October 1997 for technical support service on the product. Although Apple has not admitted any wrongdoing, Apple has agreed to settle a dispute with the Federal Trade Commission by providing full refunds or credits to customers who are original owners (or members of their immediate families) of products on the list and who paid for technical support.

Accordingly, we are pleased [to enclose a refund check] [to send this notice that we have credited your charge card] to reimburse you for the payments you made for technical support. Apple also has agreed to provide free live technical support, including a toll-free telephone number for use within the United States, for any product on the list so long as the original owner (or a member of that person's immediate family) continues to own the product. Simply call our technical support number and provide the name, model and serial number of your product for verification, and you will have access to an Apple technician at no charge.

If you have any questions, please call 1-800-xxx-xxxx.

Sincerely,

[Apple Technical Service]

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APPENDIX C

Apple Computer, Inc.
[address]

FORWARDING AND RETURN POSTAGE GUARANTEED

[Address or address window]

**ATTENTION: NOTICE OF REFUND ENCLOSED FOR
USERS OF APPLE TECHNICAL SUPPORT**

APPENDIX D

APPENDIX D

SUBMISSION OF MAGNETICALLY-RECORDED INFORMATION

Magnetic media shall be submitted in the following forms and formats:

- (A) Magnetic storage media. The FTC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 5.25-inch microcomputer floppy diskettes recorded in high or low densities; (3) 3.5-inch microcomputer floppy diskettes recorded in high or low densities; (4) CD-readable disks formatted to ISO 9660 specifications; (5) QIC-80 magnetic tapes formatted to Travan®-1, 2120 Ximat XL, or 2120 Ximat specification, uncompressed; (6) 5.25-inch ISO-standard rewritable optical disks with 512 sectors, formatted to 1.2 gigabytes; or (7) Iomega ZIP® disk. The FTC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Files provided on 8mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs but may be accepted with files compressed using TAR or CPIO, or created using DD copy or ufsdump.
- (B) File and record structures.
- (1) Magnetically-recorded information from centralized non-microcomputer-based systems.
- (a) File structures. The FTC will accept sequential files only. All other file structures must be converted into sequential format.
- (b) Record structures. The FTC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.
- (2) Magnetically-recorded information from microcomputers. Microcomputer-based word-processing documents should be in DOS-text (ASCII), WordPerfect, or Microsoft Word format. Spreadsheets should be in Microsoft Excel (.xls), or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access (.mdb), or dBase-compatible (.dbf) format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a proprietary backup program format with prior authorization only or in compressed PKZip® format.
- (C) Documentation. Brief documentation of each file on tape or disk must be provided. (1) Files

APPENDIX D

provided on disk must be accompanied by the following information: (a) full pathname and (b) the disk on which the file resides. Where necessary, paths that must be created in order to successfully read submitted files on FTC equipment also must be provided

- (2) Files provided on tape must be accompanied by the following information: (a) filename; (b) the tape on which the file resides; (c) the position of the file on the tape. For sequential database files, the documentation also must include (a) the number of records contained in the file; (b) the length and block size of each record; and (c) the record layout, including (i) the name of each element, (ii) the respective element size, in bytes, and (iii) the element's data type. The documentation should be included in the same package as the tape, along with a printout of the first 100 records in report format.

- (D) Shipping. Magnetic media must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**

IN THE MATTER OF

INTEL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket 9288. Complaint, June 8, 1998--Decision, Aug. 3, 1999

This consent order, among other things, prohibits Intel Corporation, the California-based manufacturer and marketer of microprocessors, from withholding or threatening to withhold advance technical information, basing product supply decisions upon the existence of an intellectual property dispute, and refusing to deal with certain customers as a means of coercing intellectual property licenses to their rival microprocessor and related technologies. In addition, the consent order requires the respondent to publish this order on its web site in a manner that provides reasonable notice to interested parties.

Participants

For the Commission: *John Horsley, Michael Antalics, Richard Parker, William Baer, Jeremy Bulow, Thomas Iosso, Jay Creswell, David Reiffen, and Steven Nelson.*

For the respondent: *Michael Sohn, Arnold & Porter, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Intel Corporation ("Intel") has engaged in a pattern of conduct, as described herein, that violates Section 5 of the Federal Trade Commission 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, stating its charges as follows:

A. The Respondent

1. Intel Corporation ("Intel") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2200 Mission College Boulevard, Santa Clara, California. For the fiscal year ended December 31, 1997, Intel reported revenues of approximately \$25 billion and profits of approximately \$6.9 billion.

2. Intel designs, develops, manufactures, markets, and sells a variety of semiconductor products, including microprocessor devices. A microprocessor is the central processing unit of a computer system. Often described as the "brains" of a computer system, the microprocessor serves the essential functions of processing system data and controlling other devices integral to the system. Intel's microprocessor products include a family of devices that are marketed and sold under the trade names Pentium, Pentium with MMX, Pentium Pro, and Pentium II (the "Pentium microprocessors").

3. At all times relevant herein, Intel has been, and is now, a corporation as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44; and at all times relevant herein, Intel has been, and is now, engaged in commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

B. Intel Has Monopoly Power

4. One line of commerce relevant to Intel's conduct is the manufacture and sale of all general-purpose microprocessors, including current-generation microprocessors. The relevant market also includes future-generation microprocessors and technologies for current-generation and future-generation microprocessors. In addition, narrower markets may be contained within the market for general-purpose microprocessors.

5. The relevant geographic market is the world.

6. Intel has monopoly power in the market for general-purpose microprocessors. Intel's market dominance is reflected in its own market studies, which indicate that sales of Intel microprocessor products have accounted for approximately 80 percent of the total dollar sales of general-purpose microprocessors worldwide for each of the last five years.

7. Entry is difficult and unlikely to correct Intel's monopoly power.

8. A new entrant would need to develop a relevant microprocessor product, requiring substantial capital expenditures and several years of engineering work. The entry cost required for developing a new high-performance microprocessor would likely exceed \$250 million. The development of a high-performance microprocessor product comparable to Intel's current Pentium II device or the Alpha microprocessor products currently sold by Digital Equipment

Corporation ("Digital") would likely require at least four years. For example, although Intel began development of its new 64-bit Intel microprocessor architecture (known as "IA-64") in 1994, the first generation IA-64 device known as Merced is not expected to be commercially available until the year 2000.

9. New entry is also deterred by the minimum viable scale requirements for a modern semiconductor fabrication facility. The cost of developing, building and equipping such a facility is approximately \$1.6 billion. An entrant could not expect to begin shipping revenue microprocessor products for at least four to five years after starting the construction of such a facility. A new entrant could avoid significant fixed costs in buildings or equipment by contracting with an existing microprocessor producer to provide manufacturing and development services, but even such "fabless" entry would require approximately six months and a commitment of approximately 30 staff to the manufacturing area at a cost of approximately \$200,000 per person per year, in addition to significant costs for foundry services.

10. A new entrant would also have to establish both product reputation and technical compatibility with a computer operating system and the applications software desired by a significant number of computer users. Buyers of computer systems and microprocessor components demand highly reliable products, and regard product reputation to be an essential purchasing criterion. Consumers also demand computer systems and microprocessor components that are capable of running the computer operating systems and applications software programs that are desired by computer end-users. Accordingly, a new entrant must attract support from software developers, who are generally reluctant to devote development resources to an unproven microprocessor product for which there is no demonstrated demand. Furthermore, consumers typically have many existing software applications that were written for a particular microprocessor architecture; thus, it would often be costly for consumers to switch to a new and incompatible microprocessor architecture and computer systems manufacturers to switch and risk alienating such consumers. The need simultaneously to secure a large number of users in order to make the product attractive to software developers and to secure the efforts of software developers in order to make the product attractive to users is often referred to as "network

effects." The importance of these network effects is illustrated by Intel's success in obtaining commitments from many computer manufacturers and software vendors to build computers and write software for Intel's new 64-bit Merced microprocessor, even though the product will not be available for nearly two years.

C. Intel Refused to Deal With Certain Customers as a Means of Coercing Licenses to Their Rival Microprocessor Technology

11. As more fully set forth below in paragraphs 15-37, Intel has entrenched, and threatens to continue entrenching, its monopoly power in the relevant lines of commerce by, among other things, denying or threatening to deny technical information about Intel microprocessor products to Intel customers who have developed and patented innovations in microprocessor technology, as a means of coercing those customers into licensing their innovations to Intel.

12. Intel promotes and markets its microprocessors by providing customers with technical information about new Intel products in advance of their commercial release. Intel regards such advance technical information to be proprietary and provides it subject to formal non-disclosure agreements, which prohibit recipients from disclosing such information to any unauthorized person or from using it for any unauthorized purpose. Subject to such restrictions, however, Intel makes such information widely available to customers, including manufacturers of personal computers, workstations, and servers. Such relationships have substantial commercial benefits for both parties: Intel's customers benefit because the advance technical information enables them to develop and introduce new computer products incorporating the latest microprocessor technology as early as possible, and Intel benefits because those customers design their new computer systems so as to incorporate, and effectively endorse, Intel's newest microprocessor products.

13. On at least three occasions, however, Intel suspended its established commercial relationships with particular customers, refusing to provide technical information about Intel products for the purpose of forcing those customers to grant Intel licenses to microprocessor-related technology developed and owned by those customers. Intel's conduct threatened to injure, and did injure, the ability of those targeted customers to remain competitive in

developing and bringing to market in a timely manner computer systems based on Intel microprocessors.

14. A natural and probable effect of Intel's conduct is to diminish the incentives of those three Intel customers -- as well as other firms that are Intel customers or otherwise commercially dependent upon Intel -- to develop new innovations relating to microprocessor technology. Intel's coercive business tactics effectively undermine the patent rights of such firms and reduce their incentives to develop new technologies relating to microprocessors. The nature and effects of Intel's conduct are illustrated, but not necessarily exhausted, by three cases described below in paragraphs 15-37.

1. Intel's Conduct Toward Digital Equipment Corporation

15. Digital Equipment Corporation ("Digital") is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Massachusetts, with its principal executive offices located at 111 Powdermill Road, Maynard, Massachusetts. Digital designs, develops, manufactures, and sells computer hardware and software systems, including personal computers, workstations, and servers. For the fiscal year ended June 30, 1997, Digital reported worldwide sales of approximately \$13.7 billion.

16. Digital designs, develops, manufactures, markets, and sells computer system products that incorporate Intel microprocessors. Sales of Intel-based computers constitute a substantial part of Digital's business, accounting for approximately \$2 billion of Digital's revenues for 1997. Accordingly, Digital is a significant customer of Intel, having purchased approximately \$250 million worth of Intel microprocessors for each of the last few years. Intel also expects Digital to increase the volume of its microprocessor purchases over the next few years.

17. Digital also designs, develops, manufactures, markets, and sells some semiconductor products, including microprocessor products that are generally known, marketed, and sold under the trade name Alpha. Although they have only a small share of the market, Digital's Alpha microprocessors are technologically significant. Alpha microprocessors are widely regarded to be the highest performing general purpose microprocessors available, having performance superior to any of Intel's products in terms of accepted

industry benchmarks for processor performance. When Intel engineers confirmed the performance of Digital's third generation Alpha product, they declared a "strategic emergency" and undertook to analyze the "miracles" of Alpha performance. Alpha also provides the only alternative microprocessor platform that competes with Intel's microprocessor architecture in running the Windows NT operating system. A current major goal for Intel is the development of its IA-64 microprocessor architecture to compete with Digital's current 64-bit Alpha architecture, and the development of Merced and other IA-64-based microprocessors to compete with Digital's Alpha devices.

18. In 1995 Intel introduced the Pentium Pro microprocessor, which closed some of the substantial performance gap between Intel's Pentium microprocessors and Digital's Alpha microprocessors. After examining the Pentium Pro device, Digital concluded that Intel was using Digital microprocessor technology in violation of Digital's patent rights. On May 12, 1997, Digital sued Intel for patent infringement, alleging that Intel's Pentium microprocessors infringed ten Digital microprocessor patents.

19. Intel responded to Digital's lawsuit by publicly denying Digital access to any of the Intel technical information needed to continue developing in a timely and efficient manner new computer systems incorporating new Intel microprocessors. Among other things, Intel:

- Demanded return of technical information and refused to supply any additional technical information needed by Digital to design computer systems products incorporating Intel's newest microprocessors, even though that information was available to similarly situated computer manufacturers that buy microprocessors from Intel, and even though Intel had no reasonable belief that Digital had ever misused, could misuse, or would misuse that information;
- Demanded return of microprocessor prototypes and refused to supply additional prototypes, even though such prototypes were available to similarly situated computer manufacturers that buy microprocessors from Intel, and even though Intel had no reasonable belief that Digital had misused, could misuse, or would misuse Intel's prototypes;

- Acted to create uncertainty about Digital's future source of supply of Intel microprocessors, including the orchestration of a scene in which a Digital employee was publicly ejected from a widely attended industry meeting sponsored by Intel without any advance warning; and
- Otherwise engaged in conduct to create a perception in the computer industry that Digital was no longer capable of bringing to market in a timely manner new computer system products that incorporate Intel's latest microprocessor technology. Because product life cycles for computer systems can be as short as six months, any delay in the introduction of a new product can have a significant adverse effect on the commercial prospects for that product.

20. Intel's conduct as described in paragraph 19 was not reasonably necessary to serve any legitimate, procompetitive purpose.

21. The conduct described in paragraph 19 had a significant adverse impact on Digital's ability to develop and bring to market in a timely manner new computer systems based on Intel microprocessors, and would have posed an even more significant long-term threat to Digital's business if Digital had not agreed to license its microprocessor technology to Intel.

2. Intel's Conduct Toward Intergraph Corporation

22. Intergraph Corporation ("Intergraph") is a Delaware corporation headquartered in Huntsville, Alabama. Intergraph develops, manufactures, markets, and sells computer hardware and software products. Intergraph's flagship products are computer workstations designed for sophisticated graphics applications such as computer-aided design, computer-aided engineering, computer-aided manufacturing, computer-aided animation, and other computer graphics, multimedia and digital media functions.

23. In 1987, Intergraph purchased the Advanced Processor Division of Fairchild Industries, which had developed a family of microprocessor devices known by the trade name Clipper. Until 1993, Intergraph continued to develop Clipper microprocessor technology for use in Intergraph's computer systems.

24. Beginning in late 1992, however, Intergraph shifted its focus away from Clipper-based computer systems and became one of the

first computer manufacturers to develop a family of workstations and servers based on Intel's Pentium microprocessor and Microsoft's Windows NT operating system. As an early adopter of Intel's microprocessor architecture for workstations, Intergraph provided Intel with feedback that was essential for Intel's penetration of the workstation market and otherwise validated the use of Intel's products (and their use in Windows NT-based workstations) for what was at the time a new market segment for Intel. Intergraph became the first computer systems manufacturer to offer a workstation based on Intel's Pentium Pro microprocessor, and the first to offer a single- and dual-processor 3D graphics workstation based on Intel's microprocessors.

25. By 1994, Intel-based systems represented nearly three-quarters of Intergraph's hardware unit sales, and this figure had increased to 100 percent in 1996. Over the years, Intergraph has designed many new computer systems based on new Intel microprocessors that have proved to be popular with consumers. Intergraph was the leading seller in revenue of Windows NT workstations for the first quarter of 1997.

26. In 1996, Intel demanded a royalty-free license to Intergraph's Clipper microprocessor technology as a condition for Intergraph continuing to receive technical information that Intergraph required to continue developing Intel-based workstations in a timely and efficient manner.

27. When Intergraph said it could not agree to such a demand, Intel refused to provide Intergraph with important information relating to graphics technology, contributing, along with subsequent Intel conduct, to a significant delay of Intergraph's development of a graphics workstation.

28. In 1997, Intergraph began asserting that certain third parties using Intel-based computer technology were infringing certain Intergraph patents. When some of those manufacturers in turn sought indemnification from Intel against Intergraph's claims for patent infringement, Intel increased pressure to force Intergraph to grant Intel a royalty-free license to Intergraph's microprocessor-related patents.

29. When Intergraph again refused, Intel cut off Intergraph's access to any of the Intel technical information necessary to continue developing in a timely and efficient manner new computer systems incorporating new Intel microprocessors. Among other things, Intel:

- Cut off technical information that Intergraph needed in order to design systems based on Intel's newest chips, even though that technical information was widely available to similarly situated computer manufacturers that purchase Intel microprocessors, and even though Intel had no reasonable belief that Intergraph had misused, could misuse, or would misuse Intel's technical information;
- Demanded return of microprocessor prototypes and refused to supply additional prototypes, even though such prototypes were widely available to similarly situated computer manufacturers that purchase chips from Intel, and even though Intel had no reasonable belief that Intergraph had misused, could misuse, or would misuse Intel's prototypes;
- Failed to inform Intergraph of a bug Intel had previously discovered in an Intel chip that Intergraph was purchasing, and interfered with Intergraph's efforts to seek assistance from a third party after Intergraph discovered the bug. As a result, Intergraph was forced to redesign, refabricate and retest an entire motherboard, which caused significant product delays;
- Acted to create uncertainty about Intergraph's future source of supply of Intel microprocessors; and
- Otherwise engaged in conduct to create a perception in the computer industry that Intergraph was no longer capable of bringing to market in a timely manner new computer system products that incorporate Intel's latest microprocessor technology. Because product life cycles for computer systems can be as short as six months, any delay in the introduction of a new product can have a significant adverse effect on the commercial prospects for that product.

30. Intel's conduct as described in paragraphs 26 through 29 was not reasonably necessary to serve any legitimate, procompetitive purpose.

31. The conduct described in paragraphs 26 through 29 had a significant adverse impact on Intergraph's ability to develop and bring to market in a timely manner computer systems based on Intel microprocessors, and would pose an even more significant long-term threat to Intergraph's business if a United States District Court had not

issued a preliminary injunction in April 1998 enjoining Intel from engaging in such conduct.

3. Intel's Conduct Toward Compaq Computer Corporation

32. Compaq Computer Corporation ("Compaq"), a Delaware corporation headquartered in Houston, Texas, is the largest manufacturer of personal computers in the world. Compaq designs, develops, manufactures, and sells a full line of computer system products, including personal computers, workstations, and servers. Compaq reported revenues of approximately \$24.6 billion for the fiscal year ended December 31, 1997.

33. Compaq designs, develops, manufactures, markets, and sells computer system products that incorporate Intel microprocessors. Such Intel-based computers constitute a significant part of Compaq's business, accounting for the majority of Compaq's revenues. Compaq is Intel's largest dollar and volume customer for microprocessor products, having purchased more than \$2 billion worth of Intel microprocessors during 1997.

34. In November 1994, Compaq sued another computer systems manufacturer, Packard Bell Electronics, Inc. (now Packard Bell NEC, Inc.) for using patented Compaq technology in Packard Bell computer systems. Intel, the supplier of the infringing components, intervened on Packard Bell's side, because Intel believed that it had an obligation to indemnify Packard Bell.

35. In response to Compaq's assertion of its intellectual property rights, Intel cut off technical information that Compaq needed in order to design systems based on Intel's newest chips, even though that technical information was widely available to similarly situated computer manufacturers that purchase Intel microprocessors, and even though Intel had no reasonable belief that Compaq had misused, could misuse, or would misuse Intel's technical information.

36. Intel's conduct as described in paragraph 35 was not reasonably necessary to serve any legitimate, procompetitive purpose.

37. The conduct described in paragraph 35 had a significant adverse effect on Compaq's ability to develop and bring to market in a timely manner computer systems based on Intel microprocessors, and would have posed an even more significant long-term threat to Compaq's business if Compaq had not agreed to license its technology to Intel.

D. Elements of Violations of Law

38. As set forth in paragraphs 4-10, Intel has monopoly power in the market for general-purpose microprocessors and in narrower markets contained therein.

39. As set forth in paragraphs 11-37, Intel has engaged in exclusionary conduct by cutting off and threatening to cut off valuable commercial relationships with certain of its customers as a means of coercing licenses to their patent rights in rival microprocessor and related technologies. In each instance, Intel's conduct had a significant adverse effect on the ability of the targeted customer to develop and bring to market in a timely manner computer systems based on Intel microprocessors, and would have posed a more significant long-term threat to the businesses of those customers if they had not agreed to license their technologies to Intel or, in the case of Intergraph, won an injunction against Intel's conduct. Because patent rights are an important means of promoting innovation, Intel's coercive tactics to force customers to license away such rights diminishes the incentives of any firm dependent on Intel to develop microprocessor-related technologies. Because most firms who own or are developing such technologies are vulnerable to retaliation from Intel, the natural and probable effect of Intel's conduct is to diminish the incentives of the industry to develop new and improved microprocessor and related technologies. Consequently, Intel's conduct entrenches its monopoly power in the current generation of general-purpose microprocessors and reduces competition to develop new microprocessor technology and future generations of microprocessor products.

40. Intel has willfully maintained its monopoly power in the general-purpose microprocessor market, and narrower markets contained therein, through exclusionary conduct that was not reasonably necessary to serve any legitimate, procompetitive purpose.

41. Intel also had the specific intent to attempt to monopolize both the current generation and future generations of general-purpose microprocessors, and narrower markets contained therein, and its actions create a dangerous probability that it will accomplish these objectives.

E. Violations of Law

42. Intel's conduct constitutes unlawful monopolization, unlawful attempts to monopolize, and unfair methods of competition, all in violation of Section 5 of the Federal Trade Commission Act.

Commissioner Swindle dissenting.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondent named in the caption hereof with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the respondent having been served with a copy of that complaint, together with a notice of contemplated relief; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the 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 Secretary of the Commission having thereafter withdrawn this matter from adjudication in accordance with Section 3.25(c) of its Rules; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 3.25(f) of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Intel Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at Mission College Boulevard, Santa Clara, 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

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Intel*" or "*respondent*" means Intel Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Intel, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Commission*" means the Federal Trade Commission.

C. "*Advance Technical Information*" or "*AT Information*" means confidential product information regarding a general purpose Intel microprocessor of the type necessary to enable a customer to design and develop systems incorporating those microprocessors in time for introduction into the marketplace by the official release date for such microprocessors, namely (1) the electrical, mechanical, and thermal characteristics of such microprocessor, (2) samples of such microprocessor, (3) errata and workarounds or fixes thereof for such microprocessors, (4) technical support for items (1) – (3) at a level equivalent to that provided at a time period immediately prior to the event which engendered the IP Dispute, and (5) other equivalent enabling information. For purposes of this order, it shall be presumed that disclosures of AT Information no later than 6 months before the official release date of a microprocessor are sufficient to enable a customer to design and develop a system within the time prescribed herein, and that AT Information does not include detailed microprocessor design information not generally provided to respondent's customers, nor information relevant solely to designing semiconductors.

D. "*Intellectual Property Dispute*" or "*IP Dispute*" means any circumstance where a customer of respondent has (1) directly or indirectly asserted or threatened to assert any patent, copyright or trade secret right concerning computer technology against respondent or any other customer of respondent where the asserted infringement

relates to a product supplied by respondent; or (2) refused a request by respondent to license or otherwise convey the rights to a patent, copyright or trade secret right to respondent.

II.

It is further ordered, That,

A. Except as otherwise provided in paragraph II.B. below, for a period of ten (10) years from the date this order becomes final, subject to the proviso set forth in this paragraph, respondent shall cease and desist from taking the following actions or threatening to take the following actions: (1) impeding, altering, suspending, withdrawing, withholding or refusing to provide access by any microprocessor customer to AT Information for reasons related to an Intellectual Property Dispute with such customer if at the time of such IP Dispute such customer is receiving AT Information from respondent or (2) basing any supply decisions for general purpose microprocessors upon the existence of an IP Dispute. Provided, however, that any obligation set forth in this paragraph II.A. shall be inapplicable with regard to any AT Information or product supply decision specific to any Intel microprocessor that the customer has asserted is infringing its patent, copyright or trade secret rights unless that customer agrees in writing not to seek an injunction against the manufacture, use, sale, offer to sell, or importation of all Intel microprocessors that are based upon the same core microarchitecture (e.g. P5, P6) as the Intel microprocessor that is the subject of the assertion of infringement; provided further, however, that respondent shall not take action prohibited in this paragraph II.A. for the reason that such customer is seeking or has sought compensation, damages or any other legal or equitable remedies other than injunction as herein provided.

B. Nothing in paragraph II.A. of this order shall be construed to:

1. Prohibit respondent from seeking all available legal or equitable remedies with regard to any of its patent, copyright, trade secrets, mask work, trademark, or other intellectual property; provided that a dispute as to such remedies or compensation sought for the AT Information shall not affect respondent's obligation to continue to provide the AT Information to a customer as provided in paragraph II.A. above;

2. Prohibit respondent from withholding AT Information or demanding the return of previously provided AT Information from a customer based on business considerations unrelated to the existence of the IP Dispute, including but not limited to a customer's breach of an agreement between the customer and respondent regarding the disclosure or use of the AT Information;

3. Limit respondent's right to make product (including sample) supply decisions based upon business considerations unrelated to the existence of the IP Dispute, including but not limited to constrained product (including sample) supply, customer's order rate and payment history, or customer's breach of an agreement between the customer and respondent regarding the supply or use of such products;

4. Require respondent to provide AT Information or supply general purpose microprocessors to a customer to facilitate the design or development of a type of system (*e.g.*, server, workstation, desktop, mobile unit) that such customer has not designed or developed or demonstrated plans to design or develop within the preceding year;

5. Prohibit respondent from restricting the use of AT Information to the customer's design and development of computer systems that incorporate the microprocessor to which the AT Information pertains;

6. Require respondent to disclose AT Information or supply general purpose microprocessors, when such AT Information or products (including samples) are not otherwise available for disclosure or supply to respondent's customers; or

7. Otherwise limit respondent's intellectual property rights, including the disposition of those rights.

III.

It is further ordered, That:

A. Within five (5) days of the date this order becomes final, and for a period of thirty (30) days thereafter, respondent shall publish this order on its World Wide Web site. Notice of such publication shall be made in a manner calculated to be viewed by all of respondent's customers. For purposes of this provision, notice will be deemed satisfactory if it is made by providing a direct link to the order from a notice in the following language: "FTC and Intel Settle Antitrust Litigation" posted as the first link under the "In the News" section of the "developer's" page (developer.intel.com) as the Intel site is constituted on the date this order is signed. In the event that

Intel changes its site structure, an equivalent notice in terms of ease of access and conspicuousness must be provided. After such thirty (30) day period, respondent shall maintain a link from the "developer's" page (or its equivalent) to the order in a manner that provides reasonable notice to interested parties.

B. Within ten (10) days after the date on which any person becomes a director or corporate officer, respondent shall provide a copy of this order to such person.

C. Within sixty (60) days after the date this order becomes final, respondent shall file with the Commission a verified written report setting forth in detail the manner and form in which respondent is complying and has complied with this order.

D. One (1) year from the date this order becomes final, annually for the next five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this order, and setting forth in detail any action taken in connection with the activities covered by this order.

E. For a period of five (5) years after the date this order becomes final, respondent shall maintain and make available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by paragraph II. of this order.

IV.

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, sale, or reorganization resulting in the emergence of a successor corporation or association, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order.

V.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondent shall permit any duly authorized representative of the Commission:

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Statement

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from them, to interview officers, directors, or employees of respondent, who may have counsel present.

VI.

It is further ordered, That this order shall terminate on August 3, 2009.

Commissioner Swindle dissenting.

STATEMENT OF CHAIRMAN ROBERT PITOFSKY AND
COMMISSIONERS SHEILA F. ANTHONY AND MOZELLE W. THOMPSON

Today, the Commission accepts the proposed settlement in this matter without modification. Our colleague, Commissioner Swindle, remains unpersuaded "that the conduct at issue in this case demonstrably threatened to harm the consuming public" because he "cannot accept that it could appreciably affect -- much less stem -- the immense tide of invention and improvement that continuously drives this industry." We respectfully disagree with Commissioner Swindle for two simple yet fundamental reasons.

First, we continue to have reason to believe that Intel, which the majority has reason to believe is a monopolist, engaged in "conduct, other than competition on the merits or restraints reasonably 'necessary' to competition on the merits, that reasonably appear[s] capable of making a significant contribution to creating or maintaining monopoly power." *Barry Wright Corp. v. ITT Grinnell Corp.*, 724 F.2d 227, 230 (1st Cir. 1983) (Breyer, J.) (*quoting* III P. Areeda & D. Turner, *Antitrust Law* ¶ 626 at 83 (1978)). Nothing in the public comments submitted to the Commission leads us to depart from our initial judgment.

Second, requiring "demonstrable" harm to competition after pretrial settlement has no legal basis because it has no practical basis. Settlement of the case necessarily prevents us from making any final judgment about the actual evidence of harm to competition from Intel's conduct.

STATEMENT OF COMMISSIONER ORSON SWINDLE

Shortly after the Commission accepted the consent agreement in this matter, I released a statement outlining my concerns about the case and asking for public comments addressing certain issues.¹ My statement invited views and information on three basic questions. Unfortunately, the handful of public comments on the proposed settlement did not address these queries in any meaningful way.

In a nutshell, my previous statement posed these questions:

(1) Notwithstanding its extremely large share of an alleged market for general-purpose microprocessor sales, does Intel genuinely possess monopoly power in that market?

(2) Even if one were to assume that Intel has the monopoly power claimed by the complaint, does the information available provide reason to believe that Intel's alleged abuse of that power² entrenched Intel's monopoly position in current-generation microprocessors and diminished the incentives of firms commercially dependent on Intel to develop innovations relating to microprocessor technology? Is the result of this likely to be a reduction in "competition to develop new microprocessor technology and future generations of microprocessor products"?³

(3) Will the proposed order against Intel present the Commission with significant noncompliance and enforcement problems because the order's prohibitions turn on whether Intel takes certain actions "for reasons related to" or "base[d] . . . upon the existence of" an intellectual property dispute -- criteria that, as I pointed out, could "enmesh the Commission in expensive, and perhaps intractable, enforcement proceedings"?

I am unable to vote in favor of the consent order because I continue to lack reason to believe that Intel's actions against Digital,

¹ My statement can be found on the Commission's website at www.ftc.gov/os/1999/9904/swindle.htm.

² The complaint charges that this abuse took the form of a curtailment of the supply of technical information and prototypes to Digital, Intergraph, and Compaq.

³ Complaint, ¶¶ 14, 39. My questions with regard to this issue also included whether the complaint spelled out a coherent theory of harm to consumers. In other words, even if one were to grant that Intel took actions that harmed *Digital, Intergraph, and Compaq* as alleged by the Commission, would the evidence in hand have shown that the particular injury to those three firms was reasonably likely to translate into harm to consumers overall?

Intergraph, and Compaq would have adversely affected competition and innovation in the ways charged in the complaint.

My concerns with regard to the first and third issues listed above have diminished to some extent. As to the allegation of monopoly power, some of the factors that once appeared to threaten Intel's hegemony have ebbed in recent months, and there is less reason to think that Intel's large market share overstates its power in general-purpose microprocessors.⁴

Nor would I choose to dissent if my only remaining concern were the enforceability of an order whose key terms rely too much on ascertainment and proof of the respondent's state of mind. Because the order does not appear to chill any procompetitive activity on Intel's part, and because of my faith in the ability of our staff to detect genuine instances of noncompliance, I could put aside my reservations about the order's "for reasons related to" and "base[d] . . . upon" language if I were in agreement with the complaint's underlying theory of violation -- viz., that Intel's conduct is likely to cause a reduction in "competition to develop new microprocessor technology and future generations of microprocessor products."

It is upon the plausibility of that theory, however, that I part ways with the majority. As I said in April, even if one concedes that Intel has monopoly power, I cannot comfortably translate its actions vis-à-vis three customers into the threat to microprocessor innovation depicted in the complaint. Indeed, even if one were to characterize Intel's alleged conduct as aggression against customers rather than self-defense,⁵ it seems a considerable stretch to expand that conduct into a case about chilling innovation and otherwise reducing technological competition. I am not aware of any substantial

⁴ The inroads made by Intel's microprocessor competitors into the sub-\$1000 personal computer segment seemed to pose a threat to Intel as recently as six months ago. After what first appeared to be gains in market share, however, those competitors' aggressive marketing efforts have yielded mixed results. (Of course, one can legitimately ask whether the competitors failed to sustain those gains because of Intel's dominance or, as appears at least as likely, because of their own management and strategic shortcomings.)

My increased comfort with asserting that Intel possesses monopoly power is also tempered by the breathtaking pace of cost reductions and major technology improvements in the microprocessor business, which I would not normally associate with an industry in the clutches of a firm wielding monopoly power. One could almost as easily characterize Intel as a firm that had the enormous good fortune to have caught a wave early and learned to ride it better than anyone else.

⁵ In my April statement, I noted that the Commission's pursuit of this action could send the message that, in the FTC's view, a monopolist embroiled in commercial disputes with its customers "cannot resort to 'self-help' . . . but must instead hire lawyers and take its disputes through lengthy and expensive litigation . . ."

evidentiary support for the theory that Intel's customers or others in the industry canceled development projects, cut research and development, or otherwise reduced innovation in response to Intel's conduct.

I therefore remain unpersuaded that the conduct at issue in this case demonstrably threatened to harm the consuming public. Whatever injury Intel might have visited on Digital, Intergraph, and Compaq, I cannot accept that it could appreciably affect -- much less stem -- the immense tide of invention and improvement that continuously drives this industry.⁶

Accordingly, because I still lack reason to believe that Intel's alleged conduct constituted a violation of Section 5 of the Federal Trade Commission Act, I dissent.

⁶ In their responsive statement, my colleagues assert that there is neither a legal nor a practical basis for "requiring 'demonstrable' harm to competition after pretrial settlement," since "[s]ettlement of the case necessarily prevents [the Commission] from making any final judgment about the actual evidence of harm to competition from Intel's conduct." Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson. I acknowledge, of course, that pretrial settlement cuts short the accumulation and evaluation of evidence that a complete trial would have permitted -- although we should keep in mind that *this* case was settled after extensive pretrial discovery. In any event, in questioning whether Intel's conduct demonstrably *threatened* to harm consumers, I merely meant to express my doubts about whether Section 5's "reason to believe" threshold has been crossed.