

waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## Order

### Definition

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

### I

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

### II

*It is further ordered* that respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising promotion, offering for sale, sale, or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal

Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, interpretations or purpose of any test or study.

### III

*It is further ordered* that respondent Orchid Technology, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of the Celsius Windows Accelerator, or other computer peripheral equipment, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, in any manner, directly or by implication, about the performance or attributes of any such product, unless such representation is true and, at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this provision, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

### IV

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

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

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

### V

*It is further ordered* that respondent shall notify the Commission at least

thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this Order.

### VI

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

### VII

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

## Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Orchid Technology, a California corporation.

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

This matter concerns the advertising of the "Celsius/VLB Windows Accelerator," a circuit board that both increases the speed at which a personal computer displays complex graphical images, and improves the quality of the graphical images. The Commission's complaint charges that respondent's advertising represented that excerpts from computer periodical reviews referred to the Celsius, when, in fact, they referred to products manufactured by Orchid's competitors.