

Complaint

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IN THE MATTER OF

ESB, INCORPORATED, ET AL.

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

Docket C-2147. Complaint, Feb. 14, 1972—Decision, Feb. 14, 1972

Consent order requiring a Philadelphia, Pa., seller and distributor of battery powered lighting units to cease deceptively guaranteeing the performance of its lighting units.

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 ESB, Incorporated, a corporation, and Edward J. Dwyer, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. ESB, Incorporated, formerly known as the Electric Storage Battery Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 2 Penn Center Plaza, in the city of Philadelphia, Commonwealth of Pennsylvania.

Respondent Edward J. Dwyer is an individual and an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, selling and distributing of battery powered lighting units and other products to retailers for resale to the public.

PAR. 3. In the course and conduct of their business as aforesaid, respondents now cause, and for some time last past have caused their said products, when sold, to be shipped from their place of business in the Commonwealth of Pennsylvania to purchasers thereof located in various other States of the United States and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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PAR. 4. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their products, respondents have made and are now making, in catalog and specification sheets in general circulation, statements and representations with respect to their guarantees.

Typical and illustrative of said statements and representations are the following:

GUARANTEE

Each unit shall be guaranteed by the manufacturer against defects in workmanship or materials for a period of one year.

PAR. 5. By and through the use of the above-quoted statement and representation, and others of similar import and meaning but not expressly set out herein, respondents have represented, and are now representing, directly or by implication that each of their lighting units is guaranteed without limitations or conditions for a period of one year by the manufacturer against defects in workmanship or material.

PAR. 6. In truth and in fact, each of respondents' lighting units is not guaranteed without conditions or limitations for a period of one year by the manufacturer against defects in workmanship or material.

Therefore the statements and representations as set forth in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. The use by respondents of the aforesaid false, misleading and deceptive statements and representations has had, and now has the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of the products offered by respondents by reason of said erroneous and mistaken belief.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, were and are all to the prejudice and injury of the public and of respondents' competitors and constituted and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Pro-

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tection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in said complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having reason to believe that the respondents have violated the Federal Trade Commission Act, and having determined that complaint should issue stating its charges in that respect, hereby issues its complaint, accepts said agreement, makes the following jurisdictional findings, and enters the following order:

1. ESB Incorporated, formerly known as the Electric Storage Battery Company, 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 5 Penn Center Plaza, in the city of Philadelphia, Commonwealth of Pennsylvania.

Respondent Edward J. Dwyer is an officer of said corporation and his business address is the same as that of the corporate respondent.

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

ORDER

It is ordered, That respondents ESB Incorporated, a corporation, and its officers, and Edward J. Dwyer, individually, and as officer of said corporation and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of battery-powered lighting units, or other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing by any means, directly or by implication that respondents' products are guaranteed unless the nature, extent and duration of the guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed; and unless respondents promptly and fully perform all of their obligations and require-

ments, directly or impliedly represented, under the terms of each such guarantee.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate 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 out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That each of the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.