

IN THE MATTER OF

ELECTRO TECH MANUFACTURING, INC., ET AL.

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

Docket 9202. Complaint, Nov. 1, 1985—Decision, July 9, 1986

This consent order requires a Norcross, Ga. manufacturer and marketer of home energy controlling devices, and its corporate officer, among other things, to cease making claims of energy savings associated with the product "The Energy Computer", or any other energy-control device, without competent and reliable substantiation. Additionally, respondents are prohibited from representing that consumers are eligible for a federal income tax credit with the purchase of their products, unless that is true.

Appearances

For the Commission: *Michael Dershowitz and Sandra N. Hammer.*

For the respondents: *Joseph A. Carragher, Jr., Norcross, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Electro Tech Manufacturing, Inc., a corporation, and Donald Raposo, individually and as an officer of said corporation ("respondents"), have 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:

PARAGRAPH 1. (a) Electro Tech Manufacturing, Inc. is a Georgia corporation with its principal office and place of business at 7001 Peachtree Industrial Boulevard, Norcross, Georgia.

(b) Donald Raposo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint. His principal office or place of business is the same as that of the corporation.

(c) Respondents cooperate and act together in carrying out the acts and practices alleged in this complaint.

PAR. 2. Respondents manufacture, advertise, offer for sale, sell and distribute energy control devices for residential or small commercial use.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce.

PAR. 4. In advertisements, respondents have made various statements about the energy savings capability of their energy control devices sold under the brand name "The Energy Computer." Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the advertisements attached hereto as Exhibits A and B:

You'll SAVE 20% on your heating and air conditioning energy bills.

The Energy Computer will . . . save you at least 20% in energy costs.

You realize actual savings, up to 20%, 35%, and even more in some instances.

Pays for itself in less than 2 years.

Qualified for energy tax credits.

PAR. 5. Through the use of the above statements, and other statements in advertisements not specifically set forth herein, respondents have made the following material representations, directly or by implication:

(1) Use of The Energy Computer energy control device will save consumers at least 20% and possibly, as much as 35% or more on their annual small commercial or home heating and cooling bills.

(2) It will take less than two years for consumers to save enough money on their small commercial or home heating and cooling bills by using The Energy Computer energy control device to recoup the retail cost of The Energy Computer.

(3) The Energy Computer is a qualified energy conservation product according to the U.S. Tax Code, thereby permitting purchasers of the product to obtain a tax credit and reduce their federal income tax liability.

PAR. 6. In truth and in fact:

(1) Consumers will not save 20%, or close to 20%, on their annual small commercial or home heating and cooling bills as a result of using The Energy Computer energy control device.

(2) Few, if any, consumers will save enough money on their small commercial or home heating and cooling bills by using The Energy Computer energy control device to recoup the retail cost of The Energy Computer within two years, or close to two years.

(3) The Energy Computer is not a qualified energy conservation product according to the U.S. Tax Code. Therefore, purchasers of The Energy Computer cannot obtain a tax credit or reduce their federal income tax liability by purchasing the product.

Therefore, the representations set forth in Paragraph Five were, and are, false and misleading.

PAR. 7. Through the use of the statements set forth in Paragraph Four, and others not specifically set forth herein, respondents have represented, directly or by implication, that at the time of making the representations set forth in Paragraph Five, they possessed and relied upon a reasonable basis for those representations.

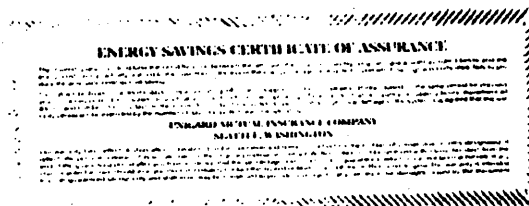
PAR. 8. In truth and in fact, at the time of the initial dissemination of the representations and each subsequent dissemination, respondents did not possess and rely upon a reasonable basis for making those representations because, *inter alia*, respondents' test protocols and calculations were not designed or conducted in a manner to produce competent, reliable and statistically meaningful results. Therefore, respondents' representations, as set forth in Paragraph Seven, were, and are, false and misleading.

PAR. 9. The acts or practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

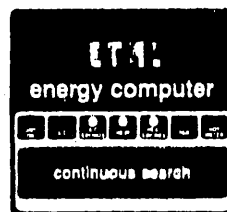
EXHIBIT A

THE ENERGY COMPUTER IS...

- A deductible business expense.
- Qualified for energy tax credits.
- A factor in increasing the resale value of your residence or building.

THIS...**THE UNIGARD INSURANCE POLICY**

False, misleading, exaggerated claims in energy savings. You've heard them and so has Uncle Sam. So much so that the federal government has had to set up a poking agency! We're all for that. Because The Energy Computer will always do for you what it promises to -- save you at least 20% in energy costs. That's not a claim. It's a fact. The Unigard Mutual Insurance Company guarantees it. And The Energy Computer has it!

AND THIS...**THE ENERGY COMPUTER**

Because The Energy Computer is a true computer -- the only one designed for residences and small commercial buildings -- it provides you many advantages. The second most important is the money you save on oil, gas or electric bills. What's the first most important? Comfort. The Energy Computer cuts your costs without cutting your comfort. No "too hot" or "too cold" setback periods. No uncomfortable "cycle off" settings.

HERE'S HOW IT WORKS...

Exhibit "A"



OTHER FEATURES THAT ADD TO YOUR COMFORT

- Power failure delay. Protects your compressor with an automatic four-minute delay. Also protects against thermostat misuse by children.
- Fail-safe function. In the event of any malfunction, your heating/cooling system will operate normally and safely.
- Hot water heater control capability. Has built-in adjustable controls to duty-cycle your hot water heater for additional efficiency (optional installation required).

PAYS FOR ITSELF IN LESS THAN 2 YEARS.

FIGURE IT OUT FOR

If Your Monthly
Heating and Air
Conditioning Bill Is...

\$ 85	20%
\$100	20%
\$115	20%
\$130	20%
\$145	20%
\$160	20%
\$175	20%
\$190	20%
\$205	20%

INSTALLED IN 29 MINUTES

Installation is easy and convenient. Our factory-trained electrical contractor installs The Energy Computer in a fast 29 minutes. (Or, to demonstrate exactly how it works, he'll connect it up temporarily in an even faster ten minutes!) Measuring only 8½ inches high by 6½ inches wide by 1½ inches deep, it's installed at the furnace or air handler, between the thermostat and the devices that the thermostat controls: heat relay, air conditioning relay, fan. 100% user satisfaction guaranteed for one year. Warranty for three years on parts.

Complaint

EXHIBIT B

At last!
a computerized energy management system that is a
"thinker" . . . not just a timer.

**INTRODUCING!
THE ENERGY COMPUTER i.m.**

Providing you with:

Continuous Comfort.

No more too-hot or too-cold "set-back" periods.
And no more uncomfortable "cycle-off" settings.
Comfort is not sacrificed.

Actual Savings in Energy Costs.

The efficiency of your central heating/cooling system is increased 24 hours each day. You realize actual savings, up to 20%, 35%, and even more in some instances. And your savings are not endangered or nullified by "time-of-day" or "demand" billing now being practiced in many utility districts.

Computer based "Continuous Search" Program.

The "secret" of the Energy Computer's advanced effectiveness over timers, set-back thermostats, or cycle selection devices. This amazing capability is explained more fully on the following page.

Many Outstanding Features, including:

- *Power failure delay.* Protects your compressor with an automatic 4 minute delay. (also protects against thermostat misuse.)
- *Fail-Safe.* In the event of any malfunction, your heating/cooling system will operate normally.
- *Hot-water heater control capability.* Has built-in adjustable controls to duty-cycle your hot-water heater for additional efficiency. (Optional installation required.)

Installation.

The Energy Computer operates in series with your existing thermostat, on any applicable 24 volt transformer circuit. The installation and operation manual provided makes it an easy, 30 minute job. No high-voltage dangers. No interference with warranties on your present system.

Guaranteed Satisfaction.

100% user-satisfaction guarantee for a full year.
Conditioned only by product misuse or abuse.

THE ENERGY COMPUTER MONEY BACK GUARANTEE

If after (12) twelve months you do not receive a *Satisfactory Monitored Savings, you may notify the company from which you purchased the unit within (10) thirty days after the (1) one year period, and you will receive a full refund of the purchase price (excluding cost of installation, monitored savings and retail price of any promotional items.) The customer agrees to monitor the equipment monthly and make available those results. This guarantee is valid for all energy management systems manufactured by EIM which have not been physically damaged or abused and have been purchased. The Energy Computer is guaranteed for three years on parts and one year on labor.

***Special Note:**

A satisfactory monitored savings will be a minimum combination of (15) fifteen percent KW/H and MCF reduction during the (12) complete billing cycles after installation using KW/H, therms, MCF, or gallons, and comparing degree days with the previous year to compare the savings.

Exhibit "B"**Continuous Search Program****All things considered . . .****Many factors affect your energy efficiency:**

- Coefficient between inside and outside temperatures (insulation, etc.)
- Volume of unrecirculated heated or cooled air in duct work
- Amount of residual heating or cooling in furnace or coil.
- Volume of heated or cooled air in unoccupied rooms
- Thermostat inefficiency (demand range beyond comfort settings)

The Energy Computer is able to "consider" all these factors, many of which are constantly changing. It is a programmed system, capable of a continuous search and test pattern, testing-setting-retesting-resetting, an endless combination of energy out-put and fan run-on possibilities.

A minimum of % test setting combinations!

The Energy Computer is constantly searching for the most efficient energy conserving cycle. For example, every fifteen minutes, it will reduce or increase in one minute increments the running time of your compressor or heating element. Because it stored in its memory what happened in the previous fifteen minutes, it is able to think and constantly make decisions. It is always trying to lower the running time of the compressor or heating element with additional use of fan run on time in air conditioning.

An I.F.D. display for status information.

You can constantly know the status of your system by observing the I.F.D. (light emitting diode) display. It's fun — but unnecessary. This computer based system is busy testing each cycle. Keeping you comfortable. With the least energy use. At the lowest possible cost. So relax and let The Energy Computer do the "thinking."

That's why we say,

All things considered . . .

DECISION AND ORDER

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

The respondents, their counsel, 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 complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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, 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 Electro Tech Manufacturing, Inc. is a Georgia corporation with its principal office and place of business at 7001 Peachtree Industrial Boulevard, Norcross, Georgia.

Respondent Donald Raposo is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent. His address is 1187 Castle Way, Norcross, Georgia.

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

ORDER

Definitions

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

Energy-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to

energy savings, energy cost savings, efficiency or conservation, "pay-back," or "payback" potential.

A *competent and reliable test* means any scientific, engineering, laboratory, or other analytical report, study or survey prepared by one or more persons with skill and expert knowledge in the field to which the material pertains and based on testing, evaluation and analytical procedures that ensure accurate, reliable and statistically meaningful results.

Small commercial heating and cooling systems are similar to residential, central forced air type systems.

Energy control device (sometimes referred to as *duty-cycler* or *cyclic controller*) means any electronic device which is not a setback thermostat, but which:

(a) functions to interrupt a thermostatically-controlled cycle of any single, residential or small commercial, forced air central heating or air conditioning unit; or which

(b) may be incorporated in any other product, such as a setback thermostat, to function in the manner described in (a) above.

PART I

It is ordered, That respondents Electro Tech Manufacturing, Inc., a corporation, its successors and assigns, and its officers, and Donald Raposo, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, in any manner that:

(1) Consumers will save 20%, or close to 20%, on their annual small commercial or home heating and cooling bills as a result of using The Energy Computer, or any other such energy control device, as defined herein.

(2) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using The Energy Computer to recoup the approximately \$400 retail cost of The Energy Computer within two years, or close to two years.

(3) More than a few consumers may be able to save enough money on their small commercial or home heating and cooling bills by using any energy control device, as defined herein, costing approximately \$400 to recoup such cost within two years, or close to two years.

(4) Consumers can obtain a federal tax credit or reduce their federal income tax liability, by purchasing The Energy Computer or any other such energy control device, as defined herein, unless such is the case.

B. Making any energy-related claim for any energy control device, or any other product or service, unless at the time that the claim is made, respondents possess and rely upon a competent and reliable test or other objective material which substantiates the claim.

PART II

It is further ordered, That respondents Electro Tech Manufacturing, Inc., a corporation, its successors and assigns, and its officers, and Donald Raposo, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale, or distribution of any energy control device or any other product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall, for at least three years from the date of the last dissemination of energy-related claims, maintain and upon request make available to Federal Trade Commission staff for inspection and copying, copies of:

1. all materials relied upon to substantiate any energy-related claim; and
2. all test reports, studies, surveys or demonstrations in their possession that contradict, qualify, or call into question any energy-related claim.

PART III

It is further ordered, That respondents shall distribute a copy of this order to each of their operating divisions and to each of their officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials, and to each of their distributors or dealers: (1) who engaged in the wholesale or retail sale of any energy control device manufactured, offered for sale, sold, or distributed by or for respondents; and (2) who purchased ten or more energy control devices from respondents.

PART IV

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of 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 this order.

PART V

It is further ordered, That each individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of three years from the date of service of this order, each individual respondent named herein shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices and of his affiliation with any new business or employment in which his own duties and responsibilities involve the manufacture, advertising, promotion, offering for sale, sale, or distribution of energy control devices, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

PART VI

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

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IN THE MATTER OF

ROY BROG

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9197. Complaint, Sept. 10, 1985—Decision, July 15, 1986*

This consent order requires a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent is prohibited from excluding some distributors in computing "average" distributor earnings without proper disclosures concerning the method of computation.

Appearances

For the Commission: *Lawrence M. Hodapp.*

For the respondents: *B.H. Harris and Joseph M. Chambers, Harris, Preston, Gutke & Chambers, Logan, Utah.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Roy Brog, individually and as an officer and director of Meadow Fresh Farms, Inc., ("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:

PARAGRAPH 1. Respondent Roy Brog is an officer and director of Meadow Fresh Farms, Inc. He formulates, directs and controls the acts and practices of said corporation, including the acts and practices alleged in this complaint. His principal office or place of business is in Salt Lake City, Utah.

PAR. 2. Respondent manufactures, offers for sale, and sells food products, including Meadow Fresh, a powdered, dairy-based drink, through a multilevel business opportunity.

PAR. 3. Respondent has caused to be prepared, published and disseminated advertising and promotional material, including, but not limited to, the promotional material referred to herein, to promote the sale of Meadow Fresh and membership in a multilevel business opportunity.