

Complaint 108 F.T.C.

IN THE MATTER OF

ELECTRONIC SYSTEMS INTERNATIONAL, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket 9201. Complaint, Nov. 1, 1985—Decision, Oct. 30, 1986*

This consent order requires, among other things, a Norcross, Ga. manufacturer and marketer of "SavIt" duty cyclers to cease making unsubstantiated representations as to the efficiency of its products or services. Additionally, respondents are required to request all dealers of its products to refrain from making the challenged claims and to recall all promotional material that does not conform to the proposed order.

Appearances

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

For the respondents: *R. Hal Meeks, Jr., Petterson, Young, Self & Asselin, Atlanta, Ga.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Electronic Systems International, Inc., a corporation, and Gene B. Patterson, 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) Electronic Systems International, Inc. is a Georgia corporation with its principal office or place of business at 2797 Peterson Place, Norcross, Georgia.

(b) Gene B. Patterson 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, some of which contain graphs and photographs, respondents have made various statements about the energy savings capability of their energy control devices sold under the brand name "SavIt," among others. Typical and illustrative of these statements, but not all-inclusive thereof, are the following from the advertisements attached hereto as Exhibits A and B:

SavIt is designed to reduce your heating and cooling cost 20% or more annually

SavIt will save consumers a minimum of 20% and a maximum of 40% on their annual heating and cooling bills.

SavIt can pay for itself in energy savings in less than 18 months.

Competent and reliable tests or studies have verified the energy-saving claims made for SavIt.

SavIt qualifies for an energy tax credit.

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 SavIt energy control device will save consumers at least 20% and possibly as much as 40% on their annual small commercial or home heating and cooling bills.

(2) It can take less than 18 months for consumers to save enough money on their small commercial or home heating and cooling bills by using the SavIt energy control device to recoup the retail cost of the SavIt energy control device.

(3) Competent and reliable tests or studies have verified that consumers will save at least 20% and possibly as much as 40% on their annual small commercial or home heating and cooling bills by using the SavIt energy control device.

(4) SavIt 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 SavIt energy control device.

(2) Few, if any, consumers can save enough money on their small commercial or home heating and cooling bills by using the SavIt

energy control device to recoup the cost of the SavIt device within 18 months, or close to 18 months.

(3) Energy savings of 20% to 40% on consumers' annual small commercial or home heating and cooling bills due to the use of the SavIt energy control device have not been verified by competent and reliable tests or studies.

(4) SavIt is not a qualified energy conservation product according to the U.S. Tax Code. Therefore, purchasers of SavIt 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"

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EXHIBIT B

Exhibit "B"

How much are you LOSING?

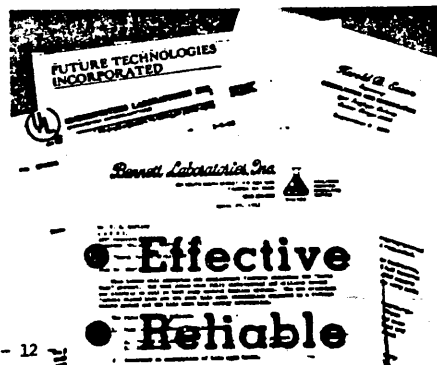
Average Monthly Heating/Cooling Bill	20% Average Annual Savings	5 Year Average Savings
\$ 50.00	\$120.00	\$892.00
\$ 75.00	\$180.00	\$1339.00
\$100.00	\$240.00	\$1786.00
\$125.00	\$300.00	\$2232.00
\$150.00	\$360.00	\$2679.00
\$200.00	\$480.00	\$3572.00
\$300.00	\$720.00	\$5358.00

Figures for 5 year savings are based on a 20% annual increase in utility bills.

Featured In The Energy Saving House Of The 1982 World's Fair

The theme "Energy Turns the World" was chosen by the 1982 World's Fair to provide an international focal point for solutions to the world's energy crisis. The Energy Saving House™ of the World's Fair was initiated to show visitors from all over the world the most energy efficient conservation methods and products for homes like yours.

The Product Review Board of the Energy Saving House chose SAVR™ as a practical, reliable product that provides immediate answers to residential energy conservation. It is the only home and light commercial energy management system chosen to be displayed in the Energy Saving House.



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 attorney, 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 Electronic Systems International, Inc. is a Georgia corporation with its principal office and place of business at 2797 Peterson Place, Norcross, Georgia.

Respondent Gene B. Patterson is an officer of the corporate respondent. He actively participated in the advertising practices which are the subject of the complaint issued by the Federal Trade Commission. His address is the same as that of the corporation.

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.

A *duty-cycler* (sometimes referred to as a *cyclic controller*) means any electronic device 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.

Respondents market their duty-cycler under the brand name "Sav-It"™, among others.

— A *duty-cycler* is not:

(a) a residential setback thermostat; or

(b) an energy load management or control device used in large commercial or industrial settings to turn off a series of electrical heating, cooling, or ventilating equipment for predetermined periods of time during operating hours to reduce consumption and demand (i.e., the rate at which electric energy is delivered to the series of equipment.)

PART I

It is ordered, That respondents Electronic Systems International, Inc., a corporation, its successors and assigns, and its officers, and Gene B. Patterson, 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 duty-cycler 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 a duty-cycler, 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 respondents' duty-cycler, as defined herein, to recoup a retail cost of approximately \$400 within 18 months, or close to 18 months.

(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 duty-cycler, as defined herein, costing approximately \$400 to recoup such cost within 18 months, or close to 18 months.

(4) Consumers can obtain a federal tax credit or reduce their federal income tax liability, by purchasing a duty-cycler, as defined herein, unless such is the case.

B. Making any energy-related claim for any duty-cycler, 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.

C. Misrepresenting, directly or by implication, in any manner, the purpose, content, or conclusion of any test, study, or survey upon which respondents rely as substantiation for any energy-related claim, or making any representation which is inconsistent with the results or conclusions of any such test, study or survey.

PART II

It is further ordered, That respondents Electronic Systems International, Inc., a corporation, its successors and assigns, and its officers, and Gene B. Patterson, 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 duty-cycler 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:

A. Within thirty (30) days after the date of service of this order, send the following material via first class mail to every person or firm that is a current distributor or dealer of respondents' duty-cycler equipment:

1. a copy of this order, and
2. a copy of the cover letter attached to this order as Attachment A, incorporated herein by reference.

B. Distribute a copy of this order to each of respondents' operating divisions, and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements or other sales materials.

C. Supply to the Federal Trade Commission upon request the names and addresses of those parties to whom respondents distributed the material required by Paragraphs A and B of Part III of this order.

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 for a period of 3 years from the date of service of this order, promptly notify the Commission of the discontinuance of his present business or employment and of his 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.

ATTACHMENT A

ELECTRONIC SYSTEMS INTERNATIONAL, INC. LETTERHEAD

Re: Settlement with Federal Trade Commission

Dear Electronic Systems International, Inc. Dealer:

As a result of a Federal Trade Commission investigation of advertising claims for our duty-cycler product, we have entered into the enclosed Settlement Agreement and Order. The Agreement is for settlement purposes only and does not constitute an admission that we violated the law. At issue in the investigation were a number of energy cost savings, payback and federal energy tax credit claims.

We have agreed to stop making certain claims in the future and to refrain from using all promotional material that may contain such claims. In order to ensure that such claims will no longer be made, we request that you refrain from making them, either orally or in writing, and from distributing any literature in your possession which does not conform to the enclosed agreement. Please return to us any promotional literature or film concerning the duty-cycler and we will replace it with updated literature and an edited film as appropriate.

Thank you for your assistance in this matter.

Sincerely,

President
Electronic Systems International, Inc.

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IN THE MATTER OF

GCS ELECTRONICS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT*Docket C-3202. Complaint, Oct. 30, 1986—Decision, Oct. 30, 1986*

This consent order prohibits, among other things, a Costa Mesa, Calif. electronics company from making unsubstantiated claims about the capabilities of its portable "Mark II Executive Phone."

Appearances

For the Commission: *Steven A. Shaffer* and *Joel Winston*.

For the respondents: *Pro se*.

COMPLAINT

The Federal Trade Commission, having reason to believe that GCS Electronics, Inc., a corporation, and Gene Comfort, individually and as an officer of said corporation, hereinafter sometimes referred to as 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. GCS is a California corporation, with its offices and principal place of business at 3200 Park Center Drive, 7th Floor, Costa Mesa, California.

Respondent Gene Comfort 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 office and principal place of business is the same as that of the corporation.

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

PAR. 2. Respondents manufacture, advertise, offer for sale, and sell mobile radiotelephones and mobile radiotelephone equipment, including the GCS Executive Phone Mark II ("Mark II").

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

PAR. 4. Typical of respondents' advertisements for the Mark II, but not necessarily all-inclusive thereof, are attached hereto as Attach-