

Complaint

108 F.T.C.

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-

ments A and B. The aforesaid advertisements contain the following statements:

(a) up to 50 mile (80 kilometer) range.

(b) 50 MILE RANGE—

With your new Mark II, you enjoy an incredible up to 50-mile receiving range - 80 kilometers - an unheard of over 1200 square mile coverage in each city!

This range, which varies somewhat plus or minus depending upon local conditions, is measured on a diameter usually from the center of your town or almost any city or town you happen to be visiting.

(c) You merely answer and talk direct as you would on any other telephone, a very easy operation.

(d) It is not a CB. It's not a walkie-talkie.

PAR. 5. Through the use of the statements referred to in Paragraph Four (a)-(b) and others in advertisements not specifically set forth herein, respondents have represented, directly or by implication, that:

(a) An appreciable number of users of the Mark II will achieve a range of 50 miles or close to 50 miles, measured between the user and the center of almost any city or town in the United States, under circumstances reasonably foreseen by consumers.

(b) Every user of the Mark II will achieve a range reasonably close to 50 miles.

(c) Every user of the Mark II will achieve a coverage of at least 1200 square miles in each city.

(d) The Mark II allows the user to transmit and receive messages simultaneously.

PAR. 6. In truth and in fact,

(a) few, if any, consumers using the Mark II will achieve a range of 50 miles or close to 50 miles under reasonably foreseen circumstances.

(b) Not every user of the Mark II will achieve a range reasonably close to 50 miles.

(c) Not every user of the Mark II will achieve a coverage of at least 1200 square miles in each city.

(d) The Mark II does not allow the user to transmit and receive messages simultaneously.

Therefore, respondents' representations as set forth in Paragraph Five were and are false and misleading.

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

PAR. 8. In truth and in fact, at the time respondents made these representations, respondents did not possess and rely upon a reasonable basis for such representations. Therefore, respondents' representations as set forth in Paragraph Seven were and are false and misleading.

PAR. 9. The acts and practices of respondents 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.

ATTACHMENT A



NEW!

**ULTRA LONG RANGE
PORTABLE CARPHONE**

Up to 50 miles (80 kilometers) range.
Exclusive Distributorships
now open in U.S. & world wide.

- Low initial investment
- Available for all U.S. states and countries world wide.
- No installation—use independent of car, building, etc.
- Highest quality, FCC Cert. equipment
- Use in Boat, Car, Aircraft, Golf course, etc.

LIMITED AVAILABILITY
(714) 751-1111

GCS **GCS ELECTRONICS INC.**
Mfg. & Corporate Offices
International Division

3200 Park Center Dr.
7th Floor
South Coast Financial Distr
Costa Mesa, CA 92626

ATTACHMENT A

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ATTACHMENT B



The Portable
Executive
Communicator

MARK II

ATTACHMENT B

MARK II GCS Executive Phone

Everything you've ever wanted in your own personal go-everywhere communications system.

WORKS LIKE A DREAM

It is a dream come true. Executive Phone Mark II is the telephone system you've always dreamed of, but never thought you'd see in your lifetime.

Imagine yourself relaxing at your favorite hideaway, in or near your city, in lakeside or on the water, receiving the important call you've been waiting for — the one that will net you thousands, even hundreds of thousands of dollars?

You don't know, but you're prepared. You take your Mark II with you everywhere — in the car, to restaurants, out on the golf course, in office buildings, day or night, everywhere. Now there it is. There's that vital call. You don't miss it. Thanks to your Executive Phone Mark II, it's as if you were immediately with a gentle electronic tone!

Isn't this the communications tool you've always wanted? A phone with no external wires at all? A phone for which people can reach you, you can reach them — indoors or out — in almost any city?

YES, THE MARK II IS EXPENSIVE

Highly sophisticated space-age technology makes GCS Executive Phone a "must" not everyone can afford. But if you can afford it, you're probably successful enough and your time valuable enough you can scarce afford to be without it.

If you are one of those fortunate few who have arrived, you increase both your efficiency and your prestige with the Executive Phone. Call your office from the board room in a skyscraper, clear across town. Receive important messages while dining at a restaurant. Make appointments from your car. Close a contract from the dock at your marina. Play a wondrous round of golf, knowing you won't miss that important call. Check on your stocks while sitting on the beach. Put your deadline to work. Change an appointment while waiting in a line at the airport.

If you're the caliber of person you can doubtless add appreciation to your success and that of your company with this extraordinary communications tool.

But the conductor's the "brass" speed of light — range — the feature that makes GCS Executive Phone the most valuable communications tool of this century.

SOFTLY RANGE —

With your new Mark II, you enjoy an incredible up to 50 miles receiving range — 80 transmitters — an unheard of over 1200 square mile coverage in each city!

This range, which varies somewhat plus or minus depending upon local conditions, is measured on a diameter usually from the center of your town or some city or town you happen to be visiting. And it matters little where you are — in the basement, in an underground parking garage, in the very center of a large shopping center — there's virtually no escape for Executive Phone's powerful and sophisticated electronics. However, if you wish privacy, merely switch off your Mark II and a secretarial unit automatically answers all your calls, holding messages for you.

USE IN ALL 50 STATES

GCS Executive Phone can be used on many services located in all cities throughout the United States including Alaska and Hawaii. Just punch the button on your hand-held transmitter receiver to call or direct from any of thousands of U.S. cities.

Your hook-up is only \$30.45 a month (average). We will assist in registering your long distance calls; you make are charged at a normal rate. Some areas may add a small per-minute charge, however all expenses are a "one-of-a-kind" fee.

USE INTERNATIONALLY

Do you travel abroad? With about 1000 cities, your Mark II can be used in any country or the world — even those that have no telephone connect facilities. GCS has a complete assortment of auxiliary equipment that permits your Executive Phone to be used with any telephone system on any continent.

PRIVATE UNLISTED NUMBER

You don't have to be a radio operator. CB's manipulate a lot of buttons or have any technical training to use the Mark II. In fact, no center is necessary. Calls reach you on your own private unlisted number. You merely answer and talk or direct as you would on any other telephone — a very easy operation.

People can call you, you can call them, whether you're at your home, base city or traveling elsewhere.

A ONE-OF-A-KIND INSTRUMENT

The GCS Executive Phone Mark II is not to be confused with any other kind of communications device. It's not a CB. It's not a ham radio. It's not one of those short-range devices, setting for less money, that you can't call any city or town or even your own city.

The Mark II is a highly sophisticated space-age long-range instrument that works only in GCS's range with modern matters as clear as the ether. It's the only kind of instrument of its kind and it remains the need for far phones or beepers.

EXECUTIVE FEATURES

The instrument you see pictured is as there is to the Mark II. It's an self-contained. There's no external wiring. The antenna is visible, remote, there's no long lead to see it.

The complete Executive Phone weighs only 2.5 pounds, is compact, it can be carried out of sight — in your pocket, briefcase, glove compartment or golf bag — and that important call comes in.

The Mark II has special features. With its control you can turn up to a maximum of 1000 cities, a conference call — or make you call — with down to complete privacy. But for most functions, the "instrument" has the standard push buttons, you're used to using on any touch telephone.

It's important that the features you want:

- Direct Dial
- Single Touch Operation
- Touch Forward
- Rechargeable Battery
- 2 Channels
- FCC Approved
- No A.M. or F.M.
- No need for antenna
- Immediate Answer
- World Circuit Technology
- Available "through-the-air"
- International Models Available

TAX WRITE OFF

That's another big benefit. You can use your GCS Executive Phone for business. You can deduct the cost, service charges, interest, and other expenses and they will be the year you can take a 10% instrument as credit and deduct from any taxes due. The instrument can check some — a problem, give free use of the instrument the very year. Check with your accountant on these matters.

People can call you, you can call them, whether you're at your home, base city or traveling elsewhere.

ATTACHMENT B



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 Protection 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 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 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 Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that 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 GCS Electronics, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3200 Park Center Drive, 7th Floor, in the City of Costa Mesa, State of California.

Respondent Gene Comfort is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his principal office and place of business is located at the above stated address.

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

Definition

Range-related claim means any general or specific, oral or written representation that, directly or by implication, describes or refers to the distance over which a radiotelephone communications device will receive and transmit signals that are of commercially useable quality.

I.

It is ordered, That respondents GCS Electronics, Inc., a corporation, its successors and assigns, and its officers, and Gene Comfort, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any mobile telephone or other radiotelephone communications device in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing in any manner, directly or by implication, any performance characteristic of any such device unless at the time of such representation, respondents possess and rely upon a reasonable basis for such representation, consisting of competent and reliable evidence which substantiates such representation.

B. Making any range-related claim about any such device which uses the phrase "up to" or words of similar import unless the maximum level of performance can be achieved by an appreciable number of consumers; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the maximum level of performance, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the maximum level of performance.

C. Misrepresenting in any manner, directly or by implication, the range or coverage of any such device.

D. Misrepresenting in any manner, directly or by implication, the ability of any such device to transmit and receive messages simultaneously.

II.

It is further ordered, That for three years from the date that the representations to which they pertain are last disseminated, respond-

ents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys or other materials in their possession or control that contradict, qualify or call into question such representation or the basis upon which respondents relied for such representation.

III.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a 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 under this order.

IV.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment. Each such notice shall 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. The expiration of the notice provision of this paragraph shall not affect any obligation arising under this order.

V.

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

IN THE MATTER OF
BENEFICIAL CORPORATION, ET AL.

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 8922. Consent Order, Sept. 12, 1979—Modifying Order, Nov. 3, 1986

The Federal Trade Commission has modified a 1979 consent order (94 F.T.C. 425) by: (1) removing a prohibition on the use of the term "instant tax refund", but requiring respondents to disclose that a fee is involved and to make the refund within five days; (2) deleting a requirement that respondents disclose all terms of their guarantees in ads and replacing it with a provision allowing respondents to disclose that full details can be obtained by reading the guarantee; (3) requiring respondents to disclose that their offer to pay obligations resulting from the company's errors does not include payment of taxes that its customers owe; (4) modifying a prohibition against advertising the expertise of their tax preparers by allowing claims that can be substantiated; and (5) modifying a prohibition against the disclosure of confidential taxpayer information, by allowing such disclosure if IRS procedures are followed.

ORDER REOPENING THE PROCEEDING AND
MODIFYING CEASE AND DESIST ORDER

On May 28, 1986, Beneficial Corporation, and Beneficial Management Corporation, both Delaware corporations, filed a request to reopen and modify the order entered against them by the Commission on September 12, 1979, in Docket No. 8922 (94 F.T.C. 425).

The request to reopen and modify was placed on the public record and a press release was issued on June 12, 1986. The public comment period ended on July 14, 1986, and two comments were filed. The deadline to rule on petitioners' request has been extended to November 3, 1986.

Petitioners are engaged in the advertising and sale of an income tax preparation service for individual taxpayers. The order: prohibits use of the term "instant tax refund"; requires disclosure of all terms of a guarantee; prohibits a misrepresentation of the reimbursement petitioner will make to consumers in the event of an error and requires a disclosure that petitioner will not reimburse the consumer for additional taxes; makes absolute prohibitions against the implication that more of its customers receive refunds than taxpayers at large; and that their personnel are experts or unusually competent. The order further sets up a format to be followed pertaining to the consumers' consent to use information obtained from them.

Petitioners assert that changed conditions of fact and law and the