

IN THE MATTER OF
LUX-VISEL COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 3683. Complaint, Jan. 5, 1939—Decision, Mar. 14, 1939

Where a corporation engaged in manufacture and sale of electric hot water heaters under name "Lux" or "Superlux"; in advertising for salesmen to sell and distribute its said products throughout the various States, in newspapers and periodicals, and in follow-up literature, letters, pamphlets, and order blanks sent to prospective salesmen making inquiry—

- (a) Represented and implied to purchasing public and to prospective agents and salesmen, that by purchasing one heater at a stipulated amount they would receive an additional one free, or that by purchasing larger quantities they would receive others free of charge, or that they would receive a "free offer" or "free sample offer," through such statements as "Free Offer," "Free Sample Offer—No Risk," and "I will send you two Super Lux Heaters for the price of only one which is \$3.00," etc., and "Don't forget I give you Free Heaters to cover transportation charges regardless of the quantity you buy";

Facts being it did not make such free offer, nor would customer get heater free, but price of so-called "free heater" was included in price of other articles, rendering of a service or payment of money was required before such free heater was furnished by it, and price charged for the one heater and the "free" heater was the regular customary price charged for two, and said offer was not special, but one of long standing which constituted its permanent method of doing business, with price referred to included in that of other articles which must be purchased to obtain so-called "free" item;

- (b) Represented, as aforesaid, that its agents normally or usually made up to \$30 a day or other large amounts of money as profits derived from their efforts in selling its said product, through such statements as "Up to \$30 Profit Daily," "Up to \$30 and More Daily," and "Pays Agents Up to \$20, \$30, \$40 in a Day," and "Try to think of any business offering you the chance to make up to \$15 to \$35 and over in a single day that you can get into as easily as this one";

Facts being its said agents do not normally or usually make profits up to \$30 a day, or any comparable or similar amounts, its claims of earnings made by its agents were greatly in excess of average earnings made by active full-time agents under normal conditions in usual course of business, very few of its agents were full-time employees or had even given it "repeat" orders, only a small percentage of its customers actually worked as agents for it or made any further purchase of its said product other than the original small order, and its sales methods accomplished, in general, only initial sale to a customer, rather than continuous and numerous repeat sales to agents and salesmen; and

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(c) Represented that its product had been approved or tested by the Underwriters Laboratories through placing in its advertising pamphlets, leaflets, and circulars, for purpose of misleading and deceiving purchasers and prospective purchasers, sketch of its said heater together with statement, in large prominent letters, "Underwriters Laboratories Seal of Approval," followed by, in small type, "is on the 8-foot cord of every," and below and again in large prominent letters, "Lux Electric Water Heater," and thereby led purchasers or prospective purchasers to believe that entire heater had been thus approved;

Facts being only cord used for attaching same to electric outlet had been approved as aforesaid, and "seal of approval" of heater had not been thus given;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers of its said product into erroneous belief that all of such false and misleading representations, and others of similar purport and effect, were true, and that said product had been approved by recognized testing laboratory with respect to quality and effectiveness, and with result that such purchasers were misled into believing that by answering its advertisements or purchasing its products or acting as its agents or salesmen they would receive something free or be able to earn large and exaggerated profits or commissions, and that, as a direct consequence of such erroneous beliefs thus induced, substantial number of purchasing public bought large quantity of its said products:

Held, That such acts and practices were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Merle P. Lyon for the Commission.

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 Lux-Visel Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of the 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. Respondent, Lux-Visel Co., Inc., is a corporation organized, existing and doing business under the laws of the State of Indiana, with its office and principal place of business located at 415 West Franklin Street, Elkhart, Ind.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture and sale of an electric hot water heater, sold under the name of Lux Electric Water Heater or Superlux Electric Water Heater. In the conduct of its business respondent uses the trade names "The Lux Company" and "Superlux." Respondent's heater consists essentially of a small aluminum disc com-

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bined with a wire heating element, designed for use in the home, shop or office, for the purpose of heating water.

In the course and conduct of its said business, respondent causes its product when sold to be transported from its aforesaid place of business in the State of Indiana to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said electric water heaters sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent employs agents and salesmen to sell and distribute its product throughout the various States of the United States, and for the purpose of securing the services of such agents and salesmen it publishes advertisements in newspapers, periodicals, and magazines soliciting agents to sell its product. Such advertisements emphasize and stress the claimed money-making possibilities for agents selling respondent's product.

Among the advertisements so published by respondent and typical of its representations in this respect are the following:

Mysterious Disc Boils Water instantly without coal gas or oil. Pays to \$30 daily. New Principle. Pocket size. Free offer. Write Superlux, Elkhart, Indiana.

This Magic-Disc Heats Water Instantly. Up to \$30 Profit Daily. Free sample Offer. Write at once for full details. The Lux Company, Dept., 403, Elkhart, Ind.

This Magic Disc Pays You Up to \$30 and More Daily. Free Offer.

Magic Disc Pays You Up to \$30 Daily! Free sample Offer—No Risk.

Amazing Magic Disc Boils Water Almost Instantly, And Pays Agents Up to \$20, \$30, \$40 in a Day.

FREE SAMPLE OFFER COUPON.

The Lux Co., Dept. 513

Elkhart, Ind.

Rush me your FREE SAMPLE Offer for a New SUPERLUX Electric Water Heater and full information about your BIG MONEY MAKING Opportunity.

Name _____

Address _____

City _____ State _____

PAR. 4. When an inquiry is received from a prospective salesman who has read one of respondent's above advertisements and has indicated his interest in becoming an agent for the sale of respondent's product, respondent sends to such person "follow-up" literature, letters, pamphlets, and order blanks, containing, among others, representations as follows:

Thousands of others have accepted my Free Sample Offer and are now making profits up to 233% and you can do the very same thing.

Unlike other concerns which require you to buy your sales outfit at an exorbitant price, I am going to help you get started with my Free Sample Offer which you will find explained in detail under Offer #1 in the enclosed application blank. I will send you two Super Lux Heaters for the price of only one which is \$3.00. When they arrive you can sell one immediately for \$3.00 and get your money back. That will give you your demonstrator without any cost whatsoever.

In addition to this handsome profit you get a liberal supply of FREE heaters that increase the amount of your profits. You don't have to hesitate to accept my Free Sample Offer because if the Lux Heater isn't all I claim, or if you are not satisfied with the Lux, just return the two heaters within ten days from shipment date and I'll refund your \$3.00 immediately.

Clouds of STEAM pay Agents up to \$30.00 in a day!

Two Easy Ways to Start making up to \$15 to \$35 in a Day. Try to think of any business offering you the chance to make up to \$15 to \$35 and over in a single day that you can get into as easily as this one.

Don't forget I give you FREE HEATERS to cover transportation charges regardless of the quantity you buy.

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondent represents and implies to the purchasing public and to prospective agents and salesmen:

1. That by purchasing one heater at a stipulated amount they will receive an additional one free, or that by purchasing larger quantities of heaters they will receive others free of charge, or that they will receive a "free offer" or "Free sample offer".

2. That respondent's agents normally or usually make up to \$30 a day or other large amounts of money as profits derived from their efforts in selling respondent's product.

PAR. 6. In truth and in fact, respondent does not make a "free offer" or "free sample offer," since the customer does not get a heater "free." The price of the so-called "Free" heater is included in the price of other articles, and the rendering of a service or a payment of money is required before such "free" heater is furnished by respondent. The price charged for the one heater and the "free" heater is the regular and customary price charged for two heaters, and is not a special offer. Furthermore, this offer of the "Free" heater or heaters is one of long standing and constitutes the respondent's permanent method of doing business and the price thereof is included in the price of the other articles which must be purchased to obtain the so-called free items.

Respondent's agents do not normally or usually make profits "up to \$30 a day" or any comparable or similar amounts, and respondent's claims of earnings made by its agents are greatly in excess of the

average earnings made by respondent's active full-time agents under normal conditions in the usual course of business. In truth and in fact, very few, if any, of respondent's agents are full-time employees or have even given the respondent "repeat" orders. Only a small percentage of respondent's customers actually work as agents for respondent or make any further purchase of respondent's heater than the original small order, and respondent's sales methods accomplish in general only the initial sale to a customer, rather than continuous and numerous "repeat" sales to agents and salesmen.

PAR. 7. For the purpose of misleading and deceiving purchasers and prospective purchasers the respondent places a pictorial representation or a sketch of its heater in its advertising pamphlets, leaflets, and circulars, which pictorial representation is accompanied by the statement "Underwriters Laboratories Seal of Approval" in large prominent letters, below which appears in small type "is on the 8-foot cord of every," and below this again in large prominent letters "Lux Electric Water Heater." By this means the purchaser or prospective purchaser is led to believe that the entire electric water heater has been approved by the Underwriters Laboratories when in truth and in fact only the cord used for attaching respondent's heater to an electric outlet has been approved by the Underwriters Laboratories, and respondent's heater is not so approved or given its "seal of approval."

PAR. 8. The use of the foregoing false and misleading representations by respondent as above set-out and others of similar purport and effect have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the erroneous belief that all of said representations are true and that said product has been approved by a recognized testing laboratory as to its quality or effectiveness in use. Such purchasers and prospective purchasers are also misled into believing that by answering respondent's advertisements or purchasing its products or acting as its agents or salesmen, they will receive something free or that they will be able to earn large and exaggerated profits or commissions. As a direct result of these erroneous and mistaken beliefs induced by the false representations hereinbefore set-out, a substantial number of the purchasing public have purchased a large quantity of respondent's products.

PAR. 9. The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on January 5, 1939, issued, and subsequently served, its complaint in this proceeding upon the respondent, Lux-Visel Co., Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce and in violation of the provisions of said act. Subsequently, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Lux-Visel Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of Indiana, with its office and principal place of business located at 415 West Franklin Street, Elkhart, Ind.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the manufacture and sale of an electric hot water heater, sold under the name of Lux Electric Water Heater, or Superlux Electric Water Heater. In the conduct of its business respondent uses the trade names, "The Lux Company" and "Superlux." Respondent causes its products when sold to be transported from its aforesaid place of business in the State of Indiana to the purchasers thereof located in various other States of the United States.

Respondent maintains and for the past several years has maintained a course of trade in said electric water heaters in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent employs agents and salesmen to sell and distribute its product throughout the various States of the United States, and for the purpose of securing the services of such agents and salesmen it publishes advertisements in newspapers, periodicals, and magazines soliciting agents to sell its product. Such advertisements emphasize and stress the claimed money-making possibilities for agents selling respondent's product.

Among the advertisements so published by respondent and typical of its representations in this respect are the following:

Mysterious Disc Bolls Water instantly without coal, gas or oil. Pays to \$30 daily. New principle. Pocket size. Free offer. Write Superlux, Elkhart, Indiana.

This Magic-Disc Heats Water Instantly. Up to \$30 Profit Daily. Free Sample Offer. Write at once for full details. The Lux Company, Dept. 403, Elkhart, Ind.

This Magic Disc Pays You Up to \$30 and More Daily. Free Offer.

Magic Disc Pays You Up to \$30 Daily! Free Sample Offer—No Risk.

Amazing Magic Disc Bolls Water Almost Instantly, And Pays Agents Up to \$20, \$30, \$40 in a Day.

FREE SAMPLE OFFER COUPON.

The Lux Co. Dept 513

Elkhart, Ind.

Rush me your FREE SAMPLE Offer for a New SUPER-LUX Electric Water Heater and full information about your BIG MONEY MAKING Opportunity.

Name-----

Address-----

City-----State-----

PAR. 4. When an inquiry is received from a prospective salesman who has read one of respondent's above advertisements and has indicated his interest in becoming an agent for the sale of respondent's product, respondent sends to such person "follow-up" literature, letters, pamphlets, and order blanks, containing, among others, representations as follows:

Thousands of others have accepted my FREE SAMPLE OFFER and are now making profits up to 233% and you can do the very same thing.

Unlike other concerns which require you to buy your sales outfit at an exorbitant price, I am going to help you get started with my FREE SAMPLE OFFER which you will find explained in detail under Offer #1 in the enclosed application blank. I will send you two SUPER LUX HEATERS for the price of only one which is \$3.00. When they arrive you can sell one immediately for \$3.00 and get your money back. That will give you your demonstrator without any cost whatsoever.

In addition to this handsome profit you get a liberal supply of FREE Heaters that increase the amount of your profits. You don't have to hesitate to accept by FREE SAMPLE OFFER because if the Lux Heater isn't all I claim, or if you are not satisfied with the Lux, just return the two heaters within ten days from shipment date and I'll refund your \$3.00 immediately.

Clouds of STEAM pay Agents up to \$30.00 in a day!

Two Easy Ways to Start making up to \$15 to \$35 in a day. Try to think of any business offering you the chance to make up to \$15 to \$35 and over in a single day that you can get into as easily as this one.

Don't forget I give you FREE HEATERS to cover transportation charges regardless of the quantity you buy.

PAR. 5. Through the use of the statements and representations hereinabove set forth and other representations similar thereto not

specifically set-out herein, the respondent represents and implies to the purchasing public and to prospective agents and salesmen:

1. That by purchasing one heater at a stipulated amount they will receive an additional one free, or that by purchasing larger quantities of heaters they will receive others free of charge, or that they will receive a "free offer" or "Free sample offer."

2. That respondent's agents normally or usually make up to \$30 a day or other large amounts of money as profits derived from their efforts in selling respondent's product.

PAR. 6. In truth and in fact, respondent does not make a "free offer" or "free sample offer," since the customer does not get a heater "free." The price of the so-called "free" heater is included in the price of other articles, and the rendering of a service or a payment of money is required before such "free" heater is furnished by respondent. The price charged for the one heater and the "free" heater is the regular customary price charged for two heaters, and is not a special offer. Furthermore, this offer of the "free" heater or heaters is one of long standing and constitutes the respondent's permanent method of doing business and the price thereof is included in the price of the other articles which must be purchased to obtain the so-called free items.

Respondent's agents do not normally or usually make profits "up to \$30 a day" or any comparable or similar amounts, and respondent's claims of earnings made by its agents are greatly in excess of the average earnings made by respondent's active full-time agents under normal conditions in the usual course of business. In truth and in fact, very few, if any, of respondent's agents are full-time employees or have even given the respondent "repeat" orders. Only a small percentage of respondent's customers actually work as agents for respondent or make any further purchase of respondent's heater than the original small order, and respondent's sales methods accomplish in general only the initial sale to a customer, rather than continuous and numerous "repeat" sales to agents and salesmen.

PAR. 7. For the purpose of misleading and deceiving purchasers and prospective purchasers the respondent places a pictorial representation or a sketch of its heater in its advertising pamphlets, leaflets, and circulars, which pictorial representation is accompanied by the statement "UNDERWRITERS LABORATORIES SEAL OF APPROVAL" in large prominent letters, below which appears in small type "is on the 8-foot cord of every," and below this again in large prominent letters "LUX ELECTRIC WATER HEATER." By this means the purchaser or prospective purchaser is led to believe that the entire electric water heater has been approved by the Under-

writers Laboratories when in truth and in fact only the cord used for attaching respondent's heater to an electric outlet has been approved by the Underwriters Laboratories, and respondent's heater is not so approved or given its "seal of approval."

PAR. 8. The use of the foregoing false and misleading representations by respondent as above set-out and others of similar purport and effect have had, and now have, the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's product into the erroneous belief that all of said representations are true and that said product has been approved by a recognized testing laboratory as to its quality or effectiveness in use. Such purchasers and prospective purchasers are also misled into believing that by answering respondent's advertisements or purchasing its products or acting as its agents or salesmen, they will receive something free or that they will be able to earn large and exaggerated profits or commissions. As a direct result of these erroneous and mistaken beliefs induced by the false representations hereinbefore set-out, a substantial number of the purchasing public have purchased a large quantity of respondent's products.

CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Lux-Visel Co., Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of an electric hot water heater sold under the name of Lux Electric Water Heater or Superlux Electric Water Heater, or any other name or names, in commerce, as com-

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merce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares, or merchandise regularly offered in connection with the purchase of specified quantities of identical, similar, or other merchandise.

2. Representing any specified sum of money as possible earnings or profits of agents, salesmen, representatives, or distributors, for any given period of time, which is not a true representation of the average earnings or profits consistently made by its active, full-time agents, salesmen, representatives, or distributors in the ordinary course of business under normal conditions and circumstances.

3. Representing any specified sum of money as earnings or profits of any specified agent, salesman, representative, or distributor, for any given period of time, which has not in fact been consistently earned by such agent, salesman, representative, or distributor in the ordinary course of business and under normal conditions and circumstances.

4. Representing that its product has been approved or tested by the "Underwriters' Laboratory" or any similar organization unless said product has been so approved or tested, and when only a portion or part of said product has been so approved or tested such fact must be clearly and unequivocally stated so that there is no deception as to which part or parts have been so approved or tested.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF
LIGHTMORE APPLIANCE CORPORATION AND SOLAR-
RAY LAMP COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2575. Complaint, Oct. 9, 1935—Decision, Mar. 15, 1939

Where a corporation engaged in manufacture and sale of incandescent bulbs for general lighting service, and of 28-40-volt lamps for country home lighting service through use of current from storage batteries and low-voltage generators, and second concern, engaged, for time, in sale of products made by former, and under same control and management—

- (a) Represented that their said lamps were guaranteed to give 1,000 hours average service, and were made according to and complied with standard specifications set by the United States Government, facts being said lamps had no guarantor other than themselves, did not give said number of hours average service, but were very erratic in both intake and output, lamps labeled 60 watts used more current and emitted more light, in many cases, than those labeled 100 watts, some lamps produced over twice as much light as others which bore identical labels as to voltage and wattage, said lamps were not made according to and in compliance with standards and specifications set by the Government, which bought no 28-40-volt lamps and had no specifications for such lamps, and specifications or requirements of which, for general lighting service lamps, were not met in the majority of cases by their said lamps, which either greatly exceeded, or fell far short of, labeled wattage and of light output required for lamps so marked;
- (b) Represented that their said lamps were quality products made for service and economy, and were rigidly tested and checked by experts at every stage of manufacture to insure high quality and uniformity, and were sold at prices lower than those of competing products, made possible by short cut, efficient methods of distribution, elimination of red tape and heavy overhead expenses, through which they were enabled to pass on to public, purchasing their said products in preference to such competitive lamps, substantial important saving, facts being they were not of high quality, etc., nor rigidly tested, etc., as above set out, nor sold at lower prices, and they did not pass on to public preferentially buying their said products substantial or important savings, but general use thereof throughout United States would have cost purchasing public, in course of a year, on basis of estimates of Bureau of Standards, over \$100,000,000 more than was then paid for current consumed by lamps in actual use;
- (c) Represented that their said products were guaranteed and made in the United States by skilled American workers, facts being they were not wholly thus made, but in the case of many contained substantially cheaper bases made in Japan by foreign workers, with label "Made in Japan" concealed from view of buyers through construction of completed products ready for use; and