

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

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- (d) Represented that their country home-service lamps were of voltage 28-32, and that purchase orders should specify such voltage and "country home lighting," facts being their said lamps were not labeled "28-32 volts" and were not such voltage, in accordance with reasonable, regular, and customary practice of all members of the industries engaged in manufacture and sale of incandescent lamps for country-home service, but were, as labeled, 28-40 volts, representing impracticable voltage range in that lamp burning in 28-volt circuit should last about 125 times as long as one in 40-volt circuit, and
- (e) Represented that said second and selling concern above referred to was manufacturer of lamps sold by it prior to February 1937, at which time, though continuing its existence, it discontinued business, facts being said concern never made any lamps;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and false belief that such various false, misleading, and untrue representations, made by them as aforesaid, were true, and to induce number thereof to buy substantial quantities of such lamps, which they would not purchase except for such erroneous and false belief, and to cause number of such public, as direct consequence of such belief induced by such misrepresentations, to buy substantial quantities of their merchandise, with result that trade was diverted unfairly to them from others likewise engaged in sale of incandescent lamps and who truthfully advertise and represent their said products; to competitors' substantial injury:

Held, That such acts and representations were to the prejudice and injury of the public and competitors and constituted unfair methods of competition.

Before *Mr. John W. Addison*, trial examiner.

Mr. Edward E. Reardon and *Mr. Clark Nichols* for the Commission.

Mr. Willis B. Rice, of New York City, for respondents.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in 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, Lightmore Appliance Corporation, is a corporation, organized on or about July 14, 1930, under the laws of the State of New York, having a place of business at Nos. 16 to 20 East Twelfth Street in the city of New York, and it is and has been

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since on or about the date of its organization engaged in the business of the manufacture and in the business of the sale of incandescent lamps.

PAR. 2. Respondent, Solar-Ray Lamp Co., Inc., is a corporation, organized on or about February 10, 1934, under the laws of the State of New York, having a place of business at Nos. 16 to 20 East Twelfth Street in the city of New York, and it is and has been since on or about the date of its organization engaged in the business of the sale of incandescent lamps. The respondents above mentioned occupy the same premises in the city of New York as their place of business.

PAR. 3. Peter Kornstein, Augusta Kornstein, and Louis Gottlieb, residents of the city of New York, are and have been, respectively, the president, vice president, and the secretary-treasurer of each respondent corporation since the time of its organization above mentioned and they have directed and controlled the business and all the activities of the respondents in the manufacture and sale of incandescent lamps.

PAR. 4. During all the times, respectively, since their organization as corporations the respondent Solar-Ray Lamp Co., directly, and the respondent Lightmore Appliance Corporation, either directly or through the Solar-Ray Lamp Co., have sold incandescent lamps, manufactured by respondent Lightmore Appliance Corporation or others, including the lamps hereinafter mentioned and referred to, some of which were made and sold for general lighting service for operation in connection with electric current supplied by public service corporations and some of which were made and sold for country home lighting service for operation in connection with electric current supplied from storage batteries and low-voltage generators, to purchasers, including wholesale dealers or jobbers and retail dealers therein, located in various States of the United States other than New York or the State of origin of the shipment, for resale by the dealer for use or consumption. The respondents, respectively, have caused the lamps when so sold by them to be transported from New York, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 5. During all the times above mentioned and for many years prior thereto, other individuals, firms, and corporations, hereinafter referred to as sellers, have been engaged, some of them in the business of the manufacture and sale, and others in the business of the sale of incandescent lamps for operation both with electric current supplied by public service corporations for general lighting service

and with electric current supplied for country home lighting service from storage batteries and low-voltage generators, to purchasers, wholesale dealers, or jobbers and retail dealers therein, located in various States of the United States other than the State of the seller or the State of origin of the shipment, for resale by the dealers for use or consumption. The sellers, respectively, have caused the lamps, when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to the purchasers located in other States.

PAR. 6. The respondents, in the sale of incandescent lamps, are and have been in substantial competition in interstate commerce with the other individuals, firms, and corporations, referred to as sellers in paragraph 5 hereof, during all the times referred to in paragraph 4 hereof.

PAR. 7. Substantially, at all the times above mentioned and referred to and for many years prior thereto, it has been the custom and practice of public service corporations throughout the United States to supply users of electric current for general lighting service in the respective communities served by them, variously for the particular community, on either 110-, 115-, or 120-volt multiple circuits, as the case may be. During said times, all the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States have known of this custom and practice and of the voltage of the electric current supplied by the service corporations in their respective localities.

Substantially, at all the times above mentioned and referred to and for many years prior thereto, it has been known to and recognized by all of the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States that the electromotive force supplied by storage batteries and low-voltage generators for service in the operation of country home lighting has averaged and continues to average from 28-32 volts.

PAR. 8. There is and has been, during all the times above mentioned and referred to and for many years prior thereto, an established and universal custom in the United States in connection with the manufacture and sale of incandescent lamps manufactured for general lighting service for operation in connection with electric current supplied by public service corporations, and of incandescent lamps manufactured for country home service for operation in connection with electric current supplied from storage batteries and low-voltage generators, that, at the times they are displayed or offered for sale or sold by the manufacturers to dealer distributors for resale and at

the times they are displayed or offered for sale or sold by manufacturers, dealer distributors, or others to users or consumers, including the Federal and State Governments and their agencies, and municipal and other corporations, and members of the public, the lamps shall be legibly, durably marked or branded, among other things, with the words and figures indicating, respectively, the number of volts and watts that is the measure of their electromotive force and power, allowing for certain tolerances, more or less, in the statement of the number of watts with which they are marked or branded. The tolerances in the watt measurement above referred to are and have been known to and recognized, substantially by all the members of the industries engaged in the manufacture and sale of incandescent lamps in the United States during all the times above mentioned and referred to. And, the tolerances in the watt measurements of incandescent lamps manufactured for general lighting service, above referred to, have during said times coincided with the tolerances as set forth in the Federal Specifications for the purchase of incandescent lamps by the United States Government.

PAR. 9. Prior to and during all the times above mentioned and referred to, it is and has been the universal understanding in the commercial manufacturing and distributing industries in incandescent lamps, that the lamps operated for general lighting service on 110-, 115-, and 120-volt multiple circuits should produce a certain number of lumens of light per watt, according to the watt rating of the lamp, allowing for certain tolerances of measure above or below the said number of lumens, in order to be adequately and practicably efficient in the production of light. During substantially all of the times above mentioned and referred to, the said number of lumens per watt and the tolerances referred to, have been known to and have been recognized by the members of the manufacturing and distributing industries engaged in the commercial manufacture and sale of incandescent lamps in the United States, and substantially during said times the lamps made and sold by the members of the said industries when operated for general lighting service have produced the amount of lumens per watt above referred to, which has during said times coincided with the amount of lumens per watt and with the tolerances therefor as set forth in the Federal Specifications for the purchase of incandescent lamps by the United States Government.

For example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, the rated initial lumens, and the rated initial lumens per watt for large tungsten fila-

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ment lamps for 110-, 115-, and 120-volt multiple lighting service, on standard bulbs for general lighting service marked 25, 40, 60, 75, and 100 watts, were as follows:

For the year beginning July 1, 1932 and ending June 30, 1933

Watts	Rated initial lumens	Rated initial lumens per watt	Bulb
25.....	253	10.1	A-19
40.....	440	11.0	A-19
60.....	738	12.3	A-21
75.....	998	13.3	A-23
100.....	1430	14.3	A-23

For the year beginning July 1, 1933 and ending June 30, 1934

Watts	Initial lumens	Rated initial lumens per watt	Bulb
25.....	250	10.0	A-19
40.....	432	10.8	A-19
60.....	732	12.2	A-21
75.....	1,028	13.7	A-21
100.....	1,470	14.7	A-23

For the year beginning July 1, 1934 and ending June 30, 1935

Watts	Initial lumens	Rated initial lumens per watt	Bulb
25.....	250	10.0	A-19
40.....	428	10.7	A-19
60.....	744	12.4	A-21
75.....	1,035	13.8	A-21
100.....	1,490	14.9	A-23

For the 2 years above mentioned, from July 1, 1933 to June 30, 1934, and July 1, 1934 to June 30, 1935, the rated lumens per watt for the 25-watt lamps listed above were for 115-volt lamps only. For 25-watt lamps, for 110-volt multiple lighting service, to obtain the correct rated lumens per watt there should be added 0.05 to the rated lumens per watt listed above; and, for 120-volt lamps there should be subtracted 0.05 from the rated lumens per watt listed above.

For the 2 years from July 1, 1933 to June 30, 1935, the rated lumens listed above for the 40-, 60-, 75-, and 100-watt lamps were for 115-volt lamps only. To obtain the correct rated lumens for 110-volt lamps of those watt measurements there should be added 0.15; and, for 120-volt lamps of such watt measurement there should be subtracted 0.15 from the lumens per watt listed above.

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PAR. 10. The tolerances allowed in the statement of the number of watts with which incandescent lamps are and have been marked or branded and the tolerances allowed and recognized in the measure of the lumens of light produced by incandescent lamps or the rate of lumens per watt mentioned and referred to in paragraphs 8 and 9 hereof, during the times mentioned and referred to in said paragraphs 8 and 9, for example, for the years beginning July 1, 1932, and ending June 30, 1933; beginning July 1, 1933, and ending June 30, 1934; and beginning July 1, 1934, and ending June 30, 1935, for large tungsten filament lamps for general lighting service, on 110-, 115-, and 120-volt multiple circuits, for standard bulbs marked 25, 40, 60, 75, and 100 watts, were as follows:

For the year beginning July 1, 1932 and ending June 30, 1933

Watts	Bulb	Lumens per watt above or below standard	Total watts above or below standard
		<i>Percent</i>	<i>Percent</i>
25.....	A-19	6	4
40.....	A-19	6	4
60.....	A-21	6	4
75.....	A-23	6	4
100.....	A-23	6	4

For the years July 1, 1933 to June 30, 1934, and July 1, 1934 to June 30, 1935

Watts	Bulb	Lumens per watt above or below declared rating	Total watts above or below rating
		<i>Percent</i>	<i>Percent</i>
25.....	A-19	5	4
40.....	A-19	5	4
60.....	A-21	5	4
75.....	A-21	5	4
100.....	A-23	5	4

PAR. 11. At all times in the use of incandescent lamps, the purchaser, or user, of the lamp is really buying light and the most efficient lamp is the one which produces the required amount of light for the least cost. Generally the cost of the electricity consumed by an incandescent lamp is many times more than the cost of the lamp to the purchaser or user and the efficiency of the lamp purchased by the user determines how advantageously or economically the electricity used by the lamp produces light. Lamps of low efficiency are inferior to lamps of high efficiency and waste electricity, thereby increasing the cost of light to the purchaser.

Incandescent lamps may be manufactured or designed for a long or a short life performance but as the efficiency of such lamps is in general not maintained at their initial light output beyond a certain period, it is desirable to manufacture such lamps in accordance with a design for a certain period of life, and to such effect that they will come as nearly as possible to maintaining their initial light output throughout their life.

There is and has been during all the times above mentioned and referred to, a standard of life performance, stated in hours, for large tungsten filament incandescent lamps of the different watt measurements for general lighting service, for 110-, 115-, and 120-volt multiple lighting service and which lamps produce, respectively, the amount of lumens of light referred to in paragraph 9 hereof, the amount of lumens for 25-, 40-, 60-, 75-, and 100-watt lamps being, for example, set forth in said paragraph 9. The standard of life performance above referred to coincides with the specifications therefor in the above-mentioned Federal Specifications for such incandescent lamps, and is known to, and recognized by, all the members of the industry engaged in the manufacture and sale of incandescent lamps throughout the United States.

The efficient life performance, referred to, of incandescent lamps measuring 25, 40, 60, 75, and 100 watts, and of standard lumen production as above set forth, was, during the year beginning July 1, 1932, and ending June 30, 1933, 1,000 hours, respectively. For the years beginning July 1, 1933 and ending June 30, 1934, and beginning July 1, 1934 and ending June 30, 1935, it was 1,000 hours for lamps rated at 25, 40, and 60 watts, and for lamps rated at 75 and 100 watts, the rated life performance was 750 hours, respectively.

PAR. 12. During all the times above mentioned it is and has been the reasonable, regular, and customary practice of all members of the industries in the United States engaged in the manufacture and sale of incandescent lamps for country-home service, to design them for an average electromotive force, or voltage, suitable for operation on 28-32-volt circuits, and only of 15-, 25-, 50-, and 100-watts electromotive power.

During all the times above referred to, standard incandescent lamps, A-17, A-19, A-21, and A-23, for country-home service and of 15, 25, 50, and 100 watts, respectively, and of an average voltage of 28-32-volts have been customarily made to produce 160, 318, 770, and 1,720 rated initial lumens respectively; or, 10.7, 12.7, 15.4, and 17.2 rated initial lumens per watt, respectively, and such lamps have been customarily represented and sold to have and they have had during said times, respectively, an average life performance of 1,000 hours.

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PAR. 13. During the times mentioned and referred to in paragraphs 4 and 6 hereof the respondents in offering for sale and in the sale of incandescent lamps sold by them as set forth in said paragraph 4 have represented to dealers and to members of the public who purchase such lamps for use, on the bulbs of the lamps and in advertisements on the labels of the cartons in which the individual lamps were packed when sold by them, and in which they were re-sold by dealers to the public for use, as set forth in said paragraph 4, and they have also represented to dealers and to the public in statements and representations in circulars and other advertisements to the effect that the lamps referred to and so sold by them were manufactured by and were the product of the respondent Solar-Ray Lamp Co., Inc. The respondents have also represented to dealers and to the public in statements in circulars and in other printed forms of advertising and verbally through their respective officers, agents, and salesmen that the incandescent lamps so sold by them, respectively, were a guaranteed product made in the United States of America by highly skilled American workers.

The respondents made and caused dealers or others, engaged in the sale of their said lamps to make, in turn, the above statements and representations to the public who purchase incandescent lamps for use; and the respondents further made and caused dealers and others likewise to make statements in similar forms of advertisements to the effect that the incandescent lamps sold by them for general-lighting service under the trade names or trade-marks Solar-Ray and Lightmore, respectively, were guaranteed to give 1,000 hours average service and that their lamps were made according to and that they complied with the standard specifications set by the United States Government (Catalog W-L-101); that the lamps were made for service and economy, were quality products, were rigidly tested and checked by experts at every stage of manufacture before leaving the factory in order to insure their high quality and uniformity; that the lamps were offered for sale and sold at lower prices than incandescent lamps were offered for sale and sold by competitors, which prices were made possible by short cut, efficient methods of distribution and by the elimination of red tape and heavy overhead expenses which enabled the respondents to pass on to the public a substantial important saving if their incandescent lamps were purchased by dealers and users in preference to lamps of respondents' competitors; that the use of the mushroom lamp, made by respondents, effected a gain of 36 percent in light, or a saving of 36 percent in lighting cost; that, by replacing an 100-watt ordinary standard lamp with an 100-watt mushroom lamp made by the respondents, the

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user would get light exceeding that given by an ordinary 150-watt lamp of a competitor; that the fact that respondents' mushroom lamps give 36 percent more light than ordinary standard lamps of competitors has been proven by scientific tests.

The respondents during the times above mentioned and referred to, represented in printed circulars and catalogs of their lamps, that orders received by them from dealers or others for country home-service lamps made by the respondents, respectively, should specify "28-32-volts" and "Country Home Lighting," and also represented in their catalogs that country home-service lamps sold by them were of the voltage 28-32 volts; and the respondents represented that the incandescent lamps made by them for country home service were guaranteed to give 1,000 hours average service, that is that they would have 1,000 hours of life performance.

The respondents made and caused dealers and others, in turn, to make the above statements and representations concerning the incandescent lamps sold by them, as set forth in paragraph 4 hereof, and many other statements and representations similar in form and effect during the times above mentioned.

The respondents caused statements of the watt and voltage measurement of the electromotive force and power of the incandescent lamps sold by them, as set forth in paragraph 4 hereof, to be printed or placed on the bulbs of the lamps by such method and in such manner that the figures or numbers representing the number of watts and volts were easily erased, and contrary to the usual custom in marking or branding such numbers or figures, employed by the members of the industries engaged in making and selling such lamps in the United States who etch or other wise cause such numbers or figures to be placed on the lamps practically permanently during their lifetime use.

PAR. 14. During all the times above mentioned and referred to, the respondent Solar Ray Lamp Co. was not engaged in the manufacture of incandescent lamps, and the representation above referred to that it was the manufacturer of the lamps sold by it, was false.

During all the times above mentioned the figures or numbers which the respondents caused to be printed or placed on the bulbs of the incandescent lamps sold by them, representing the number of watts of their electromotive power, were either greatly in excess of or less than the actual watt measurement of the lamps, after taking into consideration the tolerance above mentioned, and the respondents knew or with ordinary care should have known, their lamps were falsely branded or labeled with respect to their watt measurement.

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The respondents, knowing or having reason to believe their lamps to be falsely branded or labeled in that respect, caused the watt marking to be placed on the lamps in such manner that it could be and was easily, purposely, or accidentally by wear and tear, erased and the evidence thereby destroyed, which would show to be false, the statements and representations respecting the same, made by the respondents to dealers and caused by respondents to be passed on by the dealers, in turn, to members of the public.

In consequence of the false marking or branding of the watt measurement and the method by which respondents' lamps were marked or branded, purchasers and users of respondents' lamps, as a practical matter, were thereby prevented from readily learning the facts concerning the operation of the lamps in comparison with the facts in the operation of lamps of competitors, and in further consequence from learning that the lamps of competitors were more efficient in producing light and less expensive than respondents' to purchase and to operate.

During the times above mentioned the incandescent lamps for general lighting service, sold by the respondents as set forth in paragraph 4 hereof, were not made according to, and they did not when made comply with, the Federal Specifications for the purchase of incandescent lamps by the United States Government, in that, among other particulars, the actual measure of their electromotive power was generally either above or below the number of watts with which they were marked or branded or caused to be marked or branded by the respondents and generally they were lower in lumen efficiency, and in lumens per watt, than the measure of lumen efficiency and lumens per watt contained in the Federal Specifications above referred to, and they were lower in number of lumens of light per watt than is and has been the recognized requirement for such lamps within the understanding of the commercial manufacturing and distributing industries in such lamps in the United States during said times, after allowing for the tolerances above mentioned.

The lamps, both those for general lighting and those for country home-lighting service, so sold by the respondents as above set forth were not the product of highly skilled American workers and made in the United States of America, but were lamps a part of which, namely the bases, were made by foreign workmen in a foreign country and marked at the time of their importation into the United States with the name of the foreign country in which such bases were made. Such bases, when the lamps in which they were used by respondents were assembled ready for sale and distribution, were so marked that the name of the country in which they were manufac-

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tured was concealed and therefore not visible to purchasers or prospective purchasers or users of respondents' lamps. The respondents caused such lamps, made in part in a foreign country and by foreign workmen, to be falsely stamped on the outside and also to be falsely represented in advertisements with the words "Made in U. S. A."

The lamps sold by the respondents above referred to, both those made for general-lighting service and those made for country home-lighting service, were not quality products; were not economical in use; were not rigidly tested and checked by experts before leaving respondents' factory to insure high quality and uniformity. The respondents' lamps were not offered for sale and sold at lower prices than incandescent lamps represented to be for the same service or use and of the same watt measurement which were offered for sale and sold by competitors. The respondents did not pass on to the public who purchased incandescent lamps made and sold by them, as above set forth, any saving in expense either in the purchase of their lamps or in the operation of their lamps afterwards in use, but on the contrary the initial cost and also the cost of operation of respondents' lamps was more expensive to members of the public than the initial cost and the cost of operation of lamps of respondents' competitors. The so-called mushroom lamp made and sold by the respondents did not effect a gain of 36 percent or of any percent in lighting cost, and, when an 100-watt mushroom lamp of the respondents was used to replace an 100-watt ordinary standard lamp of respondents' competitors, the user of such a mushroom lamp would not get light exceeding that given by an 100-watt ordinary standard lamp, but on the contrary the use of the so-called mushroom lamp, in any watt size, made by the respondents produced less light, and was more expensive in lighting cost than a standard lamp of the same watt measurement made and sold by respondents' competitors.

While the respondents represented to purchasers and prospective purchasers that purchasers should specify "28-32-volts" in purchasing respondents' incandescent lamps for country-home lighting, the respondents sold such lamps for country home-lighting service which they marked or labeled "28-40 volts," and incandescent lamps for country-home service with a range of 28 to 40 volts are impracticable for use and the life of such lamps when operated at 40 volts would not exceed, in many instances, more than 20 to 30 hours.

The incandescent lamps made and sold by the respondents for general lighting service and for country home-lighting service did not give 1,000 hours average service, or have a life performance of 1,000 hours, excepting in such instances when respondents' lamps

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were so deficient in lumen production that as a consequence their life performance was thereby extended and equalled or surpassed the period of 1,000 hours, during which time such lamps did not maintain their initial light output throughout their life performance and they were during such period inefficient and excessively expensive in operation.

Each and all of the representations mentioned and referred to in paragraph 13 hereof, made and caused to be made by respondents concerning the incandescent lamps made and sold by them, including the incandescent lamps made and sold by them as set forth in paragraph 4 hereof, were false representations of material facts in the sale of incandescent lamps and when made by the respondents were known, or with reasonable care should have been known by them to be false.

PAR. 15. The statements and representations made by the respondents mentioned and referred to in paragraphs 13 and 14 hereof had the capacity and tendency to deceive and mislead wholesale and retail dealers and to cause such dealers in turn to pass on to members of the public, purchasers, and users of incandescent lamps, the representations made by the respondents; and, the said wholesale and retail dealers and members of the public were deceived and misled thereby into purchasing the respondents lamps, to their injury and prejudice, in place of incandescent lamps sold by respondents' competitors, and trade in incandescent lamps was thereby diverted from respondents' competitors to the respondents.

PAR. 16. The above acts and things done and caused to be done by the respondents were and are each and all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the meaning and intent of Section 5 of an Act of Congress, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act (U. S. Code, Title 15, Sec. 45), the Federal Trade Commission, on October 9, 1935, issued, and October 11, 1935, served its complaint in this proceeding upon Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said act, and respondents entered their appearance and filed their answer herein. Thereafter hearings were held and evidence was introduced by E. E. Reardon and Clark Nichols, attorneys for the Commission,

and two of the four witnesses were cross-examined by Willis B. Rice, attorney for respondents, before John W. Addison, trial examiner theretofore duly appointed by the Commission. Opportunity was given respondents to offer testimony in their behalf. Thereupon this proceeding came on for final hearing before the Commission on said complaint, answer, evidence, and brief on behalf of the Commission (brief for respondents and oral argument having been waived), and the Commission, having duly considered the same 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. Respondents, Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., are, respectively, 1930 and 1934 New York corporations, having their places of business in common at 16-18-20 East Twelfth Street, New York, N. Y.

PAR. 2. Philip (misnamed "Peter" in the complaint) Kornstein is president, Augusta Kornstein, vice president, and Louis Gottlieb, secretary-treasurer of both companies. They have controlled the business and activities of both companies from inception.

PAR. 3. Respondent Lightmore Appliance Corporation employs about 20 people and has been and is engaged in the business of making incandescent lamps in New York—some for general-lighting service in connection with current supplied by public service companies, and some for country-home lighting by use of current supplied from storage batteries and low-voltage generators—and of selling such lamps to wholesale and retail dealers located in various States of the United States, for resale to the public for use. It causes the lamps so sold to be transported from New York to purchasers located in other States.

PAR. 4. Respondent Solar-Ray Lamp Co., Inc., is still in existence, but has not continued to do business since about February 1937. Prior to that time it sold a portion of Lightmore Appliance Corporation's output of said lamps in commerce among the several States, in the same manner as Lightmore Appliance Corporation, itself, sold such lamps as aforesaid.

PAR. 5. General Electric Co. and other corporations, partnerships, or individuals are also engaged in the business, some making and selling and others of selling, incandescent lamps for the same purposes of use as the lamps described in paragraph 3 hereof. They also sell such lamps, in competition in commerce with respondents, to wholesale and retail dealers located in the various States of the United States

other than the State of the seller, for resale to the public for use, and cause the lamps so sold to be transported from the State of the seller to the purchasers located in other States.

PAR. 6. Substantially at all the times above mentioned and referred to, and for many years prior thereto, it has been the custom and practice of public service corporations throughout the United States to supply users of electric current for general-lighting service in the respective communities served by them, variously for the particular community, on either 110-, 115-, or 120-volt multiple circuits, as the case may be. During said times, all the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States have known of this custom and practice and of the voltage of the electric current supplied by the service corporations in their respective localities.

PAR. 7. Substantially at all the times above mentioned and referred to, and for many years prior thereto, it has been known to and recognized by all of the members of the industries engaged in the manufacture and sale of incandescent lamps throughout the United States that the electromotive force supplied by storage batteries and low-voltage generators for service in the operation of country home lighting, has averaged and continues to average 28-32 volts.

PAR. 8. At all times in the use of incandescent lamps, the purchaser or user of the lamp is really buying light, and the most efficient lamp is the one which produces the required amount of light for the least cost. Generally, the cost of the electricity consumed by an incandescent lamp is many times more than the cost of the lamp to the purchaser or user, and the efficiency of the lamp purchased by the user determines how advantageously or economically the electricity used by the lamp produces light. Lamps of low efficiency are inferior to lamps of high efficiency and waste electricity, thereby increasing the cost of light to the purchaser.

PAR. 9. Incandescent lamps may be manufactured or designed for a long- or a short-life performance, but, as the efficiency of such lamps is in general not maintained at their initial light output beyond a certain period, it is desirable to manufacture such lamps in accordance with a design for a certain period of life, and to such effect that they will come as near as possible to maintaining their initial output throughout their life.

PAR. 10. During all the times above mentioned it is and has been the reasonable, regular, and customary practice of all members of the industries in the United States engaged in the manufacture and sale of incandescent lamps for country-home service, to design them for an average electromotive force or voltage suitable for operation on 28-32 volt circuits, and only of 15, 25, 50, and 100 watts electromotive power.

PAR. 11. Respondents, to promote the sale of said lamps, represent or represented that the lamps:

(a) Are guaranteed to give 1,000 hours average service.

(b) Are made according to and comply with the standard specifications set by the United States Government.

(c) Are quality products made for service and economy and are rigidly tested and checked by experts at every stage of manufacture, in order to insure high quality and uniformity; are sold at prices lower than prices of competing lamps; that such lower prices are made possible by short cut, efficient methods of distribution, and by the elimination of red tape and heavy overhead expenses which enable them to pass on to the public buying their lamps in preference to competing lamps, a substantial, important saving.

(d) Are guaranteed products, made in the United States by skilled American workers.

It is further represented by respondents that the country home-service lamps are of the voltage 28-32 volts and that purchase orders should specify "28-32 volts" and "country-home lighting." It is represented by respondent Solar-Ray Lamp Co., Inc., that it was the manufacturer of lamps sold by it prior to February 1937.

PAR. 12. In truth and in fact:

(a) The lamps have no guarantor other than respondents; they do not give 1,000 hours average service. Tests of 125 general lighting lamps and 25 country home-service lamps sold in commerce by the respondents showed service varying from zero to 8,707 hours and averaging for different wattages from 391 to 930 hours for the general-service lamps, and from 406 to 4,056 for the country home-service lamps. They are very erratic in both intake and output. In many cases lamps labeled 60 watts use more current and emit more light than those labeled 100 watts. Some of the lamps produce over twice as much light as others which bear identical labels as to voltage and wattage.

(b) The lamps are not made according to and in compliance with the standards and specifications set by the United States Government. The Government buys no 28-40-volt lamps and has set no specifications for such lamps. The requirements of Government specifications for initial light output, with wattage and output tolerances allowable for 25-, 40-, 60-, 75-, and 100-watt large tungsten filament lamps, for general-lighting service in 110-, 115-, and 120-volt multiple lighting circuits, for the 3 years ending June 30, 1935, are correctly set forth in the tables in paragraphs 9 and 10 of the complaint. Respondents' general-lighting service lamps, in the majority

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of cases, do not meet these requirements. They either greatly exceed or fall far short of labeled wattage and of the light output required for lamps so marked.

(c) The lamps are not products of high quality and uniformity, effecting good service and economy; they are not rigidly tested and checked by experts at every stage of manufacture in order to insure high quality and uniformity; they are not sold at prices lower than prices of competing lamps, and respondents do not pass on to the public, buying their lamps in preference to competing lamps, substantial or important savings. On the contrary, it is estimated by the Bureau of Standards, that if respondents' lamps had been used throughout the United States in the year 1931, instead of the 25-, 40-, 60-, 75-, and 100-watt lamps that were used, 109.1 million more lamps would have been required, and the cost of current for operating respondents' lamps, assuming a price of 5 cents per kilowatt hours, would have been \$107,000,000 greater than was paid for the current consumed by the lamps actually used.

(d) The lamps are not wholly made in the United States by skilled American workers. Many of them contain bases made in Japan by foreign workers, and labeled "Made in Japan"; but this label is concealed from the view of buyers when these bases are by respondents placed in lamps ready for use. The cost of these bases is \$4.25 per thousand, as compared with \$5.65 per thousand for domestic bases.

(e) The country home-service lamps are not labeled 28-32 volts, but are labeled 28-40 volts. The voltage range of 28-40 is impracticable, because a lamp burning in a 28-volt circuit should last about 125 times as long as the same lamp in a 40-volt circuit.

(f) Respondent Solar-Ray Lamp Co., Inc., never made any lamps.

PAR. 13. Each and all of the false, misleading, and untrue representations so made by respondents, as set forth in paragraph 11, have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and false belief that said representations are true; and to induce a number of the purchasing public to buy a substantial quantity of said lamps when they would not buy them except for such erroneous and false belief. Further, said representations have the capacity and tendency, as a direct consequence of such erroneous and false belief induced by the misrepresentations of respondents, as aforesaid, to cause a number of the purchasing public to buy substantial quantities of said merchandise, with the result that trade is diverted unfairly to respondents from other individuals, partnerships, and corporations likewise engaged in the sale of incandescent

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lamps, who truthfully advertise and represent their merchandise. Substantial injury has been and is being done by respondents herein to their competitors in commerce among the several States of the United States, and to the public.

CONCLUSION

The aforesaid acts and representations of the respondents, Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., have been and are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition 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, the answer of respondents, testimony, and other evidence taken before John W. Addison, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, brief in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Lightmore Appliance Corporation and Solar-Ray Lamp Co., Inc., their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of incandescent electric lamp bulbs in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, directly or by implication, that the respondent Solar-Ray Lamp Co., Inc., is a manufacturer of incandescent electric lamp bulbs, unless and until said respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured.

2. Representing, directly or by implication, that respondents' lamp bulbs are made by skilled American workmen, with the most modern equipment, from the finest materials obtainable, under the supervision of highly paid engineers who have devoted their lives to the manufacture of incandescent lamp bulbs, unless such is the fact.

3. Representing, directly or by implication, that respondents' lamp bulbs will give 1,000 hours average service, unless and until such bulbs meet this standard.

4. Representing, directly or by implication, that respondents' lamp bulbs are made according to the standard specifications fixed by the United States Government, unless and until such bulbs meet these specifications.

5. Representing, directly or by implication, that respondents' lamp bulbs are rigidly tested and checked by experts at every stage of manufacture, unless such is the fact.

6. Representing, directly or indirectly, that incandescent lamp bulbs, known as country home-service lamps, constructed for use on 28-40-volt circuits will operate efficiently on a 28-32-volt circuit.

7. Representing, directly or by implication, that respondents' said products sell for less, or operate more economically, than similar products offered for sale and sold by competitors.

8. Selling, or offering for sale, as products wholly made in the United States by skilled American workmen, electric lamp bulbs constructed with bases imported from Japan.

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

Syllabus

IN THE MATTER OF

SIDNEY A. WEITZMAN, INDIVIDUALLY, AND TRADING AS
CERTIFIED SALES SERVICECOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3245. Complaint, Oct. 20, 1937—Decision, Mar. 15, 1939*

Where an individual engaged in offer and sale of various articles of merchandise, including clocks, cameras, electric dry shavers, and other articles; in soliciting sale of and in selling and distributing his said products—

Furnished various devices and plans of merchandising, which involved operation of games of chance, gift enterprises, or lottery schemes for distribution of said articles to members of public, wholly by lot or chance, and which consisted of push cards for use in sale and distribution of his said products under a plan and in accordance with said cards' explanatory legends by which amount paid for chance, or receipt of free chance, as case might be, by purchaser or customer was dependent upon number pushed by chance, and receipt by customer of article being thus disposed of was dependent upon success or failure in selecting from list on card, girl's name corresponding to that concealed under card's master seal, and under which, in case of some, person selecting by chance certain number received secondary prizes, and maker of last purchase, and under which, failing the aforesaid contingencies, customer received nothing, and operator of card was compensated for services by one of articles being thus disposed of; and Supplied and placed thereby in hands of others means by which games of chance, gift enterprises, or lottery schemes were conducted through distribution to public wholly by lot or chance of such articles, and ascertainment, similarly, of amount, if any, paid for chance, and involving game of chance or sale of a chance to procure one of said articles without cost, or by expenditure of a sum much less than price at which one of said articles would sell in usual course of retail trade, contrary to an established policy of the United States Government and in violation of the laws of several of the States, and in competition with many who sell articles of merchandise of like or similar type, grade, and quality, and are unwilling to sell such articles by any method or sales plan involving game of chance, gift enterprise, or lottery scheme and refrain from use thereof;

With result that many persons were attracted by element of chance involved in sales plan or method by which articles dealt in by him were distributed to public by use of such cards and induced to purchase such articles from him in preference to like or similar articles of competitors who do not furnish with their merchandise any push card or other device or devices by which such articles can be distributed to public by lot or chance, and he sold, as result, substantial quantities of his merchandise and trade was thus diverted unfairly to him from competitors;

Held, That such acts and practices were all to the injury of the public and competitors, and constituted unfair methods of competition.

Before *Mr. William C. Reeves*, trial examiner.

Mr. Henry C. Lank and *Mr. D. C. Daniel* for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondent.