

IN THE MATTER OF

LUX-VISEL, INC., TRADING AS THE LUX COMPANY
AND SUPERLUXCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4577. Complaint, Aug. 25, 1941—Decision, Oct. 20, 1941*

Where a corporation engaged in the manufacture of an electric water heater for use in the home, shop, or office, consisting essentially of a small aluminum disc together with a wire heating element, designated variously by it as the "Magic Disc," "Super-Lux Heater," and the "Lux," and in interstate sale and distribution of its said product through agents employed on a commission basis, and also through salesmen to whom it sold large number outright for resale;

In advertisements in newspapers and periodicals soliciting inquiries as to its product and its plans of employment and sale, and in letters, circulars, and other follow-up literature sent in response to such advertisements, and in which were included purported quotations from testimonials—

- (a) Represented and implied to agents and salesmen and to the purchasing public that its said electric water heater operated on a new principle, heated water instantly, and was capable of heating substantial quantities of water, such as required for bathing, cooking, the family laundry, and for every home use, in a shorter time than would be required by gas, coal, or oil, and at only a fraction of the cost, and that use thereof was capable of saving up to 75 percent of gas bills;

Facts being said heater operated on the principle used for many years by other manufacturers of similar electric water heaters, was incapable of heating water in the quantities claimed in a shorter time than that required by gas, coal, or oil, and at a fraction of their cost, and was incapable of effecting any substantial reduction in gas bills; and

- (b) Represented that said heater was safe and that it had been tested and approved by the American Public Service Testing System, which said corporation implied to be a duly qualified testing laboratory having facilities and competent employees to make such tests;

Facts being said heater was not entirely safe when used under recommended conditions, since hazards of electric shock and fire were present, and the American Public Service Testing System was not in existence at the time and had never had laboratory facilities or competent employees necessary to make efficient tests of such devices;

With effect of misleading and deceiving purchasers and prospective purchasers into the erroneous belief that such representations were true, and of causing a substantial portion of the purchasing public, because of such belief, to purchase substantial quantities of its said product:

Held, That such acts and practices, under the circumstances set forth, 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.

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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, Inc., a corporation trading and doing business under the names The Lux Co. and Superlux, 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, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 415 West Franklin Street, in the city of Elkhart, State of Indiana. The respondent trades and does business under the names The Lux Co. and Superlux.

PAR. 2. Respondent is now, and for several years last past has been engaged in the manufacture, sale, and distribution of an electric water heater designated variously as the "Magic Disc," the "Super-Lux Heater," and the "Lux." Respondent's said heater consists essentially of a small aluminum disc, combined with a wire heating element designed for use in the home, shop, or office in heating water. Respondent has caused and now causes its said product, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in various States of the United States other than the State of Indiana, and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said electric water heaters in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent employs agents to sell some of its said water heaters on a commission basis. Respondent also sells a large number of its heaters outright to salesmen, to be resold by said salesmen throughout the various States of the United States and in the District of Columbia. Under one plan the agents or salesmen take orders for respondent's heaters, which orders are transmitted to and filled by the respondent. Under the other plan, the salesmen purchase the heaters from the respondent and resell them to the public at a profit. For the purpose of obtaining the services of said agents and salesmen, and for the purpose of promoting the sale of its heaters to said salesmen, respondent publishes advertisements in newspapers, periodicals, and magazines soliciting inquiries as to its product and

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as to its plans of employment and sale. When an inquiry is received by the respondent indicating an interest on the part of a person in becoming a representative for the sale of respondent's said product, respondent sends to such person letters, circulars, and other "follow-up" literature. In said advertisements, letters, circulars, and other "follow-up" literature, many false and misleading statements and representations are made by the respondent in describing its said water heater and the qualities thereof. Among and typical of the statements and representations so made and circulated by the respondent are the following:

Hot water from your light socket. Amazing new way.

Amazing new principle. Makes cold water almost instantly seething, steaming, bubbling hot.

The Lux works on a new principle.

This MAGIC-DISC heats water instantly!

Sizzling, Steaming, Hot water in a fraction of the time required by gas or coal! Slip the LUX into dishpan or tub of water—plug in nearest light socket and presto!—it boils. New principle . . .

What strange element is hidden in this mysterious magic disc which makes people gasp when they see it placed in a pan of water—dish, a boiler or tub—and amazingly produces boiling, sizzling, steaming hot water at a fraction of the cost required by gas, coal or oil.

CUTS GAS BILL 75%

I use "The Lux" constantly and could not get along now without it. As well as heating my water so quickly, it has slashed my gas bill 75%—Mrs. Aldrich.

The LUX has been awarded the Certificate of Merit by the American Public Service Testing System.

The LUX has been awarded the FIRST CLASS SEAL OF APPROVAL by the American Public Service Testing System. They have tested the LUX and found it to be safe, sanitary, fast, dependable and economical.

The amazing new Super-Lux Double-Action Water Heater has completely revolutionized home water heating for every purpose—bathing, shaving, laundering, dishwashing, filling hot water bags, cooking, house-cleaning and every other domestic chore in which hot water is needed.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents and implies to prospective agents and salesmen and to the purchasing public that its said electric water heater operates on a new principle; that it heats water instantly; that it is capable of heating substantial quantities of water such as are required for bathing, cooking, and family laundry, and for every home use, in a shorter time than would be required by gas, coal, or oil, and at only a fraction of the cost; that the use of the said heater is capable of saving up to 75 percent of gas bills; that the said heater is safe, and that it has been tested and approved by the American Public Service Testing System, which respondent

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impliedly represents to be a duly qualified testing laboratory having facilities and competent employees to make such tests.

PAR. 5. The foregoing representations and implications are grossly exaggerated, are false and misleading. In truth and in fact, the respondent's said heater is not based on a new principle. It operates, in fact, on the same principle that has for many years been used by other manufacturers of similar electric water heaters. It is incapable of heating substantial quantities of water such as are needed for use in the home in a shorter time than that required by gas, coal, or oil. It cannot be operated at only a fraction of the cost of gas, coal, or oil, and it is incapable of effecting a 75 percent reduction in gas bills or any other substantial reduction in gas or other fuel bills. The said heater is not, in fact, entirely safe when used under the conditions recommended by the respondent, as hazards of electric shock and fire are present. The American Public Service Testing System, does not exist as a business enterprise at this time, and at no time did it have laboratory facilities or competent employees necessary to make efficient tests of such devices as the respondent's electric water heater.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations, as aforesaid, has had, and now has the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged 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.

REPORTS, FINDING AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 25, 1941, issued and served its complaint in this proceeding upon respondent, Lux-Visel, Inc., a corporation, trading and doing business under the names The Lux Company and Superlux, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 8, 1941, 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

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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, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its principal office and place of business located at 415 West Franklin Street, in the city of Elkhart, State of Indiana. The respondent trades and does business under the names The Lux Company and Superlux.

PAR. 2. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of an electric water heater designated variously as the "Magic Disc," the "Super-Lux Heater," and the "Lux." Respondent's said heater consists essentially of a small aluminum disc, combined with a wire heating element, designed for use in the home, shop, or office in heating water. Respondent has caused and now causes its said product, when sold, to be transported from its place of business in the State of Indiana to the purchasers thereof located in various States of the United States other than the State of Indiana, and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said electric water heaters in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its aforesaid business, respondent employs agents to sell some of its said water heaters on a commission basis. Respondent also sells a large number of its heaters outright to salesmen, to be resold by said salesmen throughout the various States of the United States and in the District of Columbia. Under one plan, the agents or salesmen take orders for respondent's heaters, which orders are transmitted to and filled by the respondent. Under the other plan, the salesmen purchase the heaters from the respondent and resell them to the public at a profit. For the purpose of obtaining the services of said agents and salesmen, and for the purpose of promoting the sale of its heaters to said salesmen, respondent publishes advertisements in newspapers, periodicals and magazines soliciting inquiries as to its product and as to its plans of employment and sale. When an inquiry is received by the respondent indicating an interest on the part of a

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person in becoming a representative for the sale of respondent's said product, respondent sends to such person letters, circulars, and other "follow-up" literature. In said advertisements, letters, circulars, and other "follow-up" literature, many false and misleading statements and representations are made by the respondent in describing its said water heater and the qualities thereof. Among and typical of the statements and representations so made and circulated by the respondent are the following:

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The LUX works on a new principle.

This MAGIC DISC heats water instantly!

Sizzling, Steaming, Hot water in a fraction of the time required by gas or coal! Slip the LUX into dishpan or tub of water—plug in nearest light socket and presto!—it boils. New principle * * *

What strange element is hidden in this mysterious magic disc which makes people gasp when they see it placed in a pan of water—dish, a boiler or tub—and amazingly produces boiling, sizzling, steaming hot water at a fraction of the cost required by gas, coal or oil.

CUTS GAS BILL 75%

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PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent represents and implies to prospective agents and salesmen and to the purchasing public that its said electric water heater operates on a new principle; that it heats water instantly; that it is capable of heating substantial quantities of water such as are required for bathing, cooking, the family laundry, and for every home use, in a shorter time than would be required by gas, coal, or oil, and at only a fraction of the cost; that the use of the said heater is capable of saving up to 75 percent of gas bills; that the said heater is safe, and that it has been tested and approved by the American Public Service Testing System, which respondent impliedly represents to be a duly qualified testing laboratory having facilities and competent employees to make such tests.

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PAR. 5. The foregoing representations and implications are grossly exaggerated, false, and misleading. In truth and in fact, the respondent's said heater is not based on a new principle. It operates, in fact, on the same principle that has for many years been used by other manufacturers of similar electric water heaters. It is incapable of heating substantial quantities of water such as are needed for use in the home in a shorter time than that required by gas, coal, or oil. It cannot be operated at only a fraction of the cost of gas, coal, or oil, and it is incapable of effecting a 75 percent reduction in gas bills or any other substantial reduction in gas or other fuel bills. The said heater is not, in fact, entirely safe when used under the conditions recommended by the respondent, as hazards of electric shock and fire are present. The American Public Service Testing System does not exist as a business enterprise at this time, and at no time did it have laboratory facilities or competent employees necessary to make efficient tests of such devices as the respondent's electric water heater.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations, as aforesaid, has had, and now has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the erroneous and mistaken belief that such statements and representations are true, and has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial quantities of respondent's said product.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found 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 the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Lux-Visel, Inc., a corporation, trading and doing business under the names The Lux Company and

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Superlux, or under any other name, 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 water heater, now designated variously as the "Magic Disc," the "Super-Lux Heater," and the "Lux," whether sold under these names or any other name or names, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's electric water heater operates on a new principle.

2. That it heats water instantly.

3. That it is capable of heating substantial quantities of water in a shorter period of time than will gas, coal, or oil, and at only a fraction of the cost.

4. That the use of respondent's heater will enable one to save up to 75 percent of gas bills or that its use will effect any substantial reduction in the cost of heating water as compared with gas or other fuel.

5. That said heater is safe.

6. That said heater has been tested and approved by the American Public Service Testing System.

7. That said heater has been subjected to any tests at all, unless it has in fact been subjected to scientific tests by a reputable recognized testing laboratory properly equipped and staffed for the testing of such products.

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
WILLIAM B. BARTLETT, TRADING AS CHAMPION
BATTERY COMPANY

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

Docket 4578. Complaint, Aug. 27, 1941—Decision, Oct. 20, 1941

Where a corporation long engaged, under a corporate name including the word "champion," in the manufacture and in the interstate sale and distribution of spark plugs and other mechanical apparatus, had built up a valuable good will in aforesaid name as applied thereto, and members of the purchasing public had, through long usage, come to identify electrical and other mechanical apparatus and accessories bearing said name as products of aforesaid well and favorably known company, and manifested a preference therefor; and

Thereafter an individual engaged in the interstate sale and distribution of a so-called sales stimulator plan which included certificates and electric lanterns with batteries, and bulbs for use in connection therewith, and in soliciting sale of and selling his said plan under a method pursuant to which he took from the retailer a form of written order or contract by which latter ordered a certain number of certificates, depositing with said individual's agent a portion of the purchase price, balance to be paid upon delivery, and under which it was further provided that when the certificate was returned for redemption to the dealer by the customer it must be accompanied by a "trial order" for six Champion "heavy duty" batteries, at 10 cents each, and two bulbs at 10 cents each, the dealer deducting and retaining, as a refund for the certificate purchased, the sum of 10 cents and an additional 5 cents as a commission, and forwarding to said individual the 65 cent balance, whereupon latter was to send customer lantern, bulbs, and batteries—

- (a) Made use of word "Champion" in trade name and on said lanterns and on labels of said batteries, to induce the erroneous belief that his business was connected with, and his products manufactured by or purchased from, aforesaid long, well, and favorably known corporation, and thereby caused many members of the public to purchase his said products in such belief, and placed in the hands of retailers, a means whereby the purchasing public was misled and deceived;
- (b) Represented, in many instances, in soliciting dealers that they were purchasing outright a certain number of lanterns for 10 cents each, making no mention of the certificates whatsoever, while representing in other instances that he would redeem each of such certificates through the dealer without any further cost or obligation by furnishing to the latter for delivery to each customer who held a certificate "One nationally advertised Champion 'Red Guard' electric lantern";

Facts being that when contract, which called for a specified number of certificates and not lanterns, at 10 cents each, was presented to dealer, his signature was secured before he was given opportunity carefully to read the same; letters acknowledging receipts of orders were worded so as to imply an