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 12 FEDERAL TRADE COMMISSION

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

15 **FEDERAL TRADE**
 16 **COMMISSION,**

17 Plaintiff,

18 v.

19 **LIGHTS OF AMERICA, INC.,**
 20 *et al.,*

21 Defendants.

Case No. SACV10-01333 JVS
 (MLGx)

**FINAL JUDGMENT AND ORDER
 FOR INJUNCTIVE AND OTHER
 RELIEF**

Hearing Date: None
 Judge: Hon. James V. Selna

1 On September 7, 2010, Plaintiff, Federal Trade Commission (“FTC” or
2 “Commission”) brought this action for injunctive and equitable monetary relief
3 against Lights of America, Inc. (“LOA”), Usman Vakil, and Farooq Vakil
4 (collectively, “Defendants”) for deceptive business practices related to their
5 marketing and sale of light bulbs that use light-emitting diodes (“LEDs”) as a light
6 source. (Docket No. 1) In the Complaint and First Amended Complaint (Docket
7 Nos. 1 and 38), the FTC asserted that Defendants’ activities violated Section 5(a)
8 of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (the “FTC Act”), and
9 requested injunctive and equitable monetary relief against all Defendants pursuant
10 to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).

11 The parties filed cross-motions for summary judgment on February 13,
12 2102. (Docket Nos. 164, 165, 170, 184, and 167) On April 25, 2012, the Court
13 granted Plaintiff’s motion for partial summary judgment on Count I of the
14 Amended Complaint, granted in part LOA’s motion for summary judgment with
15 respect to Count II of the Amended Complaint, and denied the Vakils’ motion for
16 summary judgment. (Docket No. 243 (the “MSJ Order”))¹

17 The Court conducted a four-day bench trial between October 30 and
18 November 2, 2012. Four claims were tried before the Court: (1) whether
19 Defendants violated Section 5 of the FTC Act by engaging in deceptive acts or
20 practices in making false claims with regard to LED lamps replacing certain
21 wattage incandescent lamps; (2) whether Defendants violated Section 5 of the FTC
22 Act by engaging in deceptive acts or practices in making unsubstantiated and/or
23 false claims with regard to the lifetime of their LED lamps; (3) whether injunctive
24 relief against all Defendants is proper; and (4) whether Defendants are liable for

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26 ¹ On September 17, 2012, Defendants filed a motion for reconsideration of the
27 Court’s order granting the FTC’s motion for partial summary judgment. (Docket
28 No. 264) After further briefing, the Court denied Defendants’ motion for
reconsideration on October 24, 2012. (Docket No. 317)

1 equitable monetary relief and/or disgorgement of ill-gotten gains. The Court
2 received evidence in the form of exhibits, designated portions of deposition
3 transcripts, and witness testimony. After carefully reviewing all of the evidence,
4 testimony, and arguments presented by the parties' counsel, the Court concluded in
5 its Findings of Fact and Conclusions of Law that the FTC had proven by a
6 preponderance of the evidence that Defendants are liable for the deceptive
7 marketing and sale of certain LED lamps in violation of Section 5(a) of the FTC
8 Act. (Docket No. 361) The Court entered its Findings of Fact and Conclusions of
9 Law pursuant to Federal Rule of Civil Procedure 52(a). The Court also found that
10 injunctive relief against all Defendants is appropriate because: (1) it is reasonably
11 likely that Defendants will commit the kinds of deceptive practices at issue in this
12 case in the future; (2) Defendants acted with sufficient deliberateness; (3)
13 Defendants have had prior experience with false claims; and (4) Defendants are in
14 a position to repeat their deceptive acts with other lighting products they sell.
15 Further, the Court ruled that equitable monetary relief against all Defendants in the
16 amount of \$21,165,863.47 is appropriate in this case.

17 The Court directed the FTC to file a proposed judgment embodying its
18 ruling as set forth in the Findings of Fact and Conclusions of Law entered on
19 September 17, 2013 (Docket No. 361) (the "Findings"). On September 23, 2013,
20 the FTC filed its proposed final judgment and order for permanent injunction
21 against Defendants. Based upon the record established in this case, the Court
22 enters this Final Judgment and Order for Injunctive and Other Relief pursuant to
23 Federal Rule of Civil Procedure 58.

1 **SUMMARY OF FINDINGS AND JUDGMENT**

2 1. This Court has jurisdiction over the subject matter of this case and
3 each of the parties. Venue lies properly with this Court.

4 2. Pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), the
5 Commission has the authority to seek the relief contained herein.

6 3. At all relevant times, the acts and practices of Defendants have been
7 in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act,
8 15 U.S.C. § 44.

9 4. The evidence admitted on summary judgment established that
10 Defendants made unsubstantiated claims that their LED Lamps provided the same
11 or comparable light output as incandescent lamps. MSJ Order, at 7-9.

12 5. The evidence admitted at trial established that Defendants made false
13 claims that their LED Lamps provided the same or comparable light output as
14 incandescent lamps. Findings, ¶¶ 85, 90, 94-97, 103, 243-244.

15 6. The evidence admitted at trial established that Defendants made
16 unsubstantiated and false claims about the lifetime of their LED Lamps. Findings,
17 ¶¶ 150, 158, 165-166, 168, 173-174, 176, 181, 183-184, 187, 189-190, 196-199,
18 204-205, 207-209, 218, 227, 243-244.

19 7. The evidence admitted at trial and the evidence admitted during
20 summary judgment established that Defendants violated Section 5(a) of the FTC
21 Act, 15 U.S.C. § 45(a), in making unsubstantiated and false claims about the light
22 output and lifetime of their LED Lamps.

23 8. The evidence admitted at trial established that there is a reasonable
24 likelihood that Defendants would continue to engage in the activities alleged unless
25 permanently enjoined from such acts and practices. Thus, this Court held that
26 injunctive relief was warranted against all Defendants. Findings, ¶¶ 472-486.

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1 9. The evidence admitted at trial established that equitable monetary
2 relief against Defendants was warranted. Findings, ¶¶ 487-516.

3 10. LOA’s gross revenue is a conservative, yet proper measure of
4 monetary liability in this case. Findings, ¶¶ 517-522. Equitable monetary relief
5 under both restitution and disgorgement theories is the same in this case:
6 Defendants’ gross revenues from the deceptively advertised products.

7 11. Total consumer harm and total ill-gotten gains in this case equals
8 \$21,165,863.47. Findings, ¶¶ 523-535. LOA, Usman Vakil, and Farooq Vakil are
9 jointly and severally liable for equitable monetary relief in the amount of twenty-
10 one million, one hundred sixty-five thousand, eight hundred sixty-three dollars and
11 forty-seven cents (\$21,165,863.47), plus post-judgment interest which will accrue
12 upon entry of this Final Judgment.

13 12. Entry of this Final Judgment is in the public interest. There being no
14 just reason for delay, the Clerk is directed to enter judgment immediately.

DEFINITIONS

15 For the purposes of this Final Judgment, the following definitions shall
16 apply:
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- 18 1. “Individual Defendants” means Usman Vakil and Farooq Vakil.
- 19 2. “Corporate Defendant” means Lights of America, Inc., and its
20 successors and assigns.
- 21 3. “Defendants” means all of the Individual Defendants and the
22 Corporate Defendant, individually, collectively, or in any
23 combination.
- 24 4. “FTC” or “Commission” means the Federal Trade Commission.
- 25 5. “Competent and reliable scientific evidence” means tests, analyses,
26 research, or studies that have been conducted and evaluated in an
27 objective manner by qualified persons, that are generally accepted in
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1 the relevant scientific field to yield accurate and reliable results, and
2 that are sufficient in quality and quantity based on standards
3 generally accepted in the field, when considered in light of the entire
4 body of relevant and reliable scientific evidence, to substantiate that
5 a representation is true.

- 6 6. “Light-emitting diode lamp” or “LED Lamp” shall mean all
7 product(s) advertised, marketed, offered for sale, or sold that
8 include, or are advertised, marketed, offered for sale, or sold as
9 including, a light-emitting diode(s) as a light source.
- 10 7. “Lifetime,” as established in the Court’s Findings, means the period
11 at which an LED Lamp reaches seventy (70) percent of its original
12 light output (known as L_{70}), which shall be based upon competent
13 and reliable scientific evidence.
- 14 8. “Light Output” means the measure of light emanating from an LED
15 Lamp, which amount shall be based upon competent and reliable
16 scientific evidence.
- 17 9. “Incandescent Lamp” means any light bulb in which light is
18 produced by an electric current.
- 19 10. “Covered product” means any lamp, LED Lamp, luminaire, light
20 bulb, or any other light-emitting device that is intended for lighting
21 and manufactured, assembled, or placed into the stream of
22 commerce by Defendants, regardless of base size, bulb size, bulb
23 shape, or technology.
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1 **I. PROHIBITED REPRESENTATIONS**

2 **IT IS HEREBY ORDERED** that Defendants and their officers, agents,
3 servants, employees, and attorneys, and all persons and entities in active concert or
4 participation with any of them who receive actual notice of this Final Judgment by
5 personal service or otherwise, whether acting directly or indirectly, in connection
6 with the manufacturing, marketing, labeling, advertising, promotion, offering for
7 sale, sale, or distribution of any covered product in or affecting commerce, are
8 permanently restrained and enjoined from:

9 (A) Making any misrepresentation or assisting others in misrepresenting,
10 expressly or by implication, any fact material to consumers
11 concerning any covered product.

12 (B) Making any misrepresentation or assisting others in misrepresenting,
13 expressly or by implication:

14 (1) Light output or brightness in lumens;

15 (2) Light output equivalency to incandescent or any general service
16 lamp;

17 (3) Lifetime of the product; or

18 (4) Energy costs, energy savings, energy consumption, or energy-
19 related efficacy.

20 At the time of making such representation, Defendants must possess and rely upon
21 competent and reliable evidence that substantiates that the representation is true.
22 If, in general, experts in the relevant scientific fields would conclude it is
23 necessary, such evidence must be competent and reliable scientific evidence.

24 **II. MONETARY JUDGMENT**

25 **IT IS FURTHER ORDERED** that:

26 A. Judgment is hereby entered in favor of the Commission and against
27 Defendants Lights of America, Inc., Usman Vakil, and Farooq Vakil, jointly and
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1 severally, for equitable monetary relief, including but not limited to consumer
2 redress, in the amount of twenty-one million, one hundred sixty-five thousand,
3 eight hundred sixty-three dollars and forty-seven cents (\$21,165,863.47), which is
4 the amount of injury suffered by consumers, or unjust enrichment obtained by
5 Defendants, resulting from Defendants' violations of the FTC Act.

6 B. All funds paid to the Commission pursuant to this Section shall be
7 deposited into a fund administered by the Commission or its designee to be used
8 for equitable relief, including consumer redress and any attendant expenses for the
9 administration of any redress fund. In the event that direct restitution to consumers
10 is wholly or partially impracticable or money remains after redress is completed,
11 the Commission may apply any remaining money for such equitable relief
12 (including consumer information remedies) as it determines to be reasonably
13 related to Defendants' practices as alleged in the Complaint. Any money not used
14 for such equitable relief will be deposited to the U.S. Treasury as disgorgement.
15 Defendants have no right to challenge any actions the Commission or its
16 representatives may take pursuant to this Subsection. The preceding sentence shall
17 have no effect on Defendants' right to challenge the substance of this subparagraph on
18 appeal.

19 C. Defendants acknowledge that their Taxpayer Identification Numbers
20 (Social Security Numbers or Employer Identification Numbers), which Defendants
21 must submit to the Commission within ten (10) days of entry of this Final
22 Judgment, may be used for collecting and reporting on any delinquent amount
23 arising out of this Order, in accordance with 31 U.S.C. § 7701.

24 **III. FINAL JUDGMENT ACKNOWLEDGMENTS**

25 **IT IS FURTHER ORDERED** that Defendants obtain acknowledgments of
26 receipt of this Final Judgment:
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1 (A) Each Defendant, within seven (7) business days of entry of this Final
2 Judgment, must submit to the Commission an acknowledgement of
3 receipt of this Final Judgment sworn under penalty of perjury.

4 (B) For five (5) years after entry of this Final Judgment, each Individual
5 Defendant (for any business that such Defendant, individually or
6 collectively with any other Defendants, is the majority owner or
7 controls directly or indirectly), and each Corporate Defendant, must
8 deliver a copy of this Final Judgment to:

9 (1) All principals, officers, directors, and LLC managers and
10 members;

11 (2) All employees, agents, and representatives who participate in
12 activities related to Defendants' marketing and sale of covered
13 products; and

14 (3) Any business entity resulting from any change in structure as set
15 forth in the Section titled Compliance Reporting.

16 Delivery must occur within seven (7) days of entry of this Final
17 Judgment for current personnel. For all others, delivery must occur
18 before they assume their responsibilities.

19 (C) From each individual or entity to which a Defendant delivered a copy
20 of this Final Judgment, Defendant must obtain, within thirty (30)
21 days, a signed and dated acknowledgment of receipt of this Final
22 Judgment.

23 **IV. COMPLIANCE REPORTING**

24 **IT IS FURTHER ORDERED** that Defendants make timely submissions to
25 the Commission:

26 (A) One year after entry of this Final Judgment, each Defendant must
27 submit a compliance report, sworn under the penalty of perjury:
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1 (1) Each Defendant must: (a) identify the primary physical, postal,
2 and email and telephone number, as designated points of contact,
3 which representatives of the Commission may use to
4 communicate with Defendant; (b) identify all of that Defendant's
5 businesses by all of their names, telephone numbers, and
6 physical, postal, email, and Internet addresses; (c) describe the
7 activities of each business, including any goods and services
8 offered, the means of advertising, marketing, and sales, and the
9 involvement of any other Defendant (which Individual
10 Defendants must describe if they know or should know due to
11 their own involvement); (d) describe in detail whether and how
12 that Defendant is in compliance with each Section of this Final
13 Judgment; and (e) provide a copy of each Acknowledgment
14 obtained pursuant to this Final Judgment, unless previously
15 submitted to the Commission.

16 (2) Additionally, each Individual Defendant must: (a) identify all
17 telephone numbers, and all email, Internet, physical, and postal
18 addresses, including all residences; (b) identify all business
19 activities, including any business for which such Defendant has
20 any ownership interest; and (c) describe in detail such
21 Defendant's involvement in each such business, including title,
22 role, responsibilities, participation, authority, control, and any
23 ownership.

24 (B) For ten (10) years following entry of this Final Judgment, each
25 Defendant must submit a compliance notice, sworn under penalty of
26 perjury, within 14 days of any change in the following:
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1 (1) Each Defendant must report any change in: (a) any designated
2 point of contact; or (b) the structure of any Corporate Defendant
3 or any entity that Defendant has any ownership interest in or
4 controls directly or indirectly that may affect compliance
5 obligations arising under this Final Judgment, including:
6 creation, merger, sale, or dissolution of the entity or any
7 subsidiary, parent, or affiliate that engages in any acts or
8 practices subject to this Final Judgment.

9 (2) Additionally, each Individual Defendant must report any change
10 in: (a) name, including aliases or fictitious names, or residence
11 address; or (b) title or role in any business activity, including any
12 business for which such Defendant performs services whether as
13 an employee or otherwise and any entity in which such
14 Defendant has any ownership interest, and identify the name,
15 physical address, and any Internet address of the business or
16 entity.

17 (C) Each Defendant must submit to the Commission notice of the filing of
18 any bankruptcy petition, insolvency proceeding, or any similar
19 proceeding by or against such Defendant within fourteen (14) days of
20 its filing.

21 (D) Any submission to the Commission required by this Final Judgment to
22 be sworn under penalty of perjury must be true and accurate and
23 comply with 28 U.S.C. § 1746, such as by concluding: “I declare
24 under penalty of perjury under the laws of the United States of
25 America that the foregoing is true and correct. Executed on:
26 _____” and supplying the date, signatory’s full name, title (if
27 applicable), and signature.
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1 (E) Unless otherwise directed by a Commission representative in writing,
2 all submissions to the Commission pursuant to this Final Judgment
3 must be emailed to Debrief@ftc.gov or sent by overnight courier (not
4 the U.S. Postal Service) to: Associate Director for Enforcement,
5 Bureau of Consumer Protection, Federal Trade Commission, 600
6 Pennsylvania Avenue NW, Washington, D.C. 20580. The subject line
7 must begin: FTC v. Lights of America, Inc.

8 V. COMPLIANCE MONITORING

9 **IT IS FURTHER ORDERED** that, for the purpose of monitoring
10 Defendants' compliance with this Final Judgment:

11 (A) Within fourteen (14) days of receipt of a written request from a
12 representative of the Commission, each Defendant must: submit
13 additional compliance reports or other requested information, which
14 must be sworn under penalty of perjury; appear for depositions; and
15 produce documents for inspection and copying. The Commission is
16 also authorized to obtain discovery, without further leave of court,
17 using any of the procedures prescribed by Federal Rules of Civil
18 Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36,
19 45, and 69.

20 (B) The Commission may use all other lawful means, including posing,
21 through its representatives, as consumers, suppliers, or other
22 individuals or entities, to Defendants or any individual or entity
23 affiliated with Defendants, without the necessity of identification or
24 prior notice. Nothing in this Final Judgment limits the Commission's
25 lawful use of compulsory process, pursuant to Sections 9 and 20 of
26 the FTC Act, 15 U.S.C. §§ 49, 57b-1.
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1 **VI. RECORDKEEPING**

2 **IT IS FURTHER ORDERED** that Defendants must create certain records
3 for ten (10) years after entry of the Final Judgment, and retain each such record for
4 5 years. Specifically, Corporate Defendant and each Individual Defendant for any
5 business in which that Defendant, individually or collectively with any other
6 Defendants, is a majority owner or controls directly or indirectly, must create and
7 retain the following records:

- 8 (A) Accounting records showing the revenues from all goods or services
9 sold;
- 10 (B) Personnel records showing, for each person providing services,
11 whether as an employee or otherwise, that person's: name, addresses,
12 telephone numbers, job title or position, dates of service, and (if
13 applicable) the reason for termination;
- 14 (C) Records of all consumer complaints and refund requests, whether
15 received directly or indirectly, such as through a third party, and any
16 response;
- 17 (D) All records necessary to demonstrate full compliance with each
18 provision of this Final Judgment, including all submissions to the
19 Commission; and
- 20 (E) A copy of each unique advertisement or other marketing material for
21 any covered product.
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VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Final Judgment.



Dated: September 30, 2013

HON. JAMES V. SELNA
UNITED STATES DISTRICT JUDGE

1 Date: September 23, 2013

Respectfully submitted,

2 /s/ Kimberly L. Nelson

3 KIMBERLY L. NELSON

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