

IN THE MATTER OF
MAURICE J. FEIL ET AL. TRADING AS
THE ENURSTONE COMPANY

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE
COMMISSION ACT

Docket 6564. Complaint, June 7, 1956—Decision, Oct. 2, 1959

Order requiring a Beverly Hills, Calif., concern to cease advertising falsely
that its "Enurstone" device would stop all cases of bed wetting.

Mr. John J. McNally for the Commission.

*Mr. Harold Easton, Mr. Theodore J. Elias and Mr. Robert B.
Hudson*, all of Los Angeles, Calif., for respondents.

INITIAL DECISION BY EARL J. KOLB, HEARING EXAMINER

This proceeding is before the undersigned hearing examiner for
final consideration of the complaint, as amended, answer thereto,

testimony and other evidence and proposed findings as to the facts and conclusions and briefs in support thereof presented by counsel. The hearing examiner has given consideration to the proposed findings of fact and conclusions of law submitted by both parties, and all findings of fact and conclusions of law proposed by the parties respectively, not hereinafter specifically found or concluded, are herewith rejected, and the hearing examiner having considered the record herein and being now fully advised in the premises makes the following findings as to the facts and conclusions drawn therefrom and order:

1. Respondents Maurice J. Feil and Leo A. Loeb are copartners trading as The Enurstone Company, with their principal place of business located at 324 South Beverly Drive, Beverly Hills, California.

2. Respondents, since 1949 up to the present time, have been engaged in the leasing of a device designated as "Enurstone" for use in cases of enuresis or bed-wetting. Up until 1951 respondents traded as King Research Laboratories, at which time they commenced trading under their present trade name of The Enurstone Company.

3. In the course and conduct of their business respondents have caused said "Enurstone" device, when leased, to be transported from their place of business in the State of California to lessees located in various States of the United States, who, in turn, rent said device to members of the general public. Respondent maintain, and at all times mentioned herein have maintained, a substantial course of trade in the leasing of said devices in commerce between the various states of the United States.

4. In the course and conduct of their business and in order to induce the leasing and rental of their said device, respondents have represented by means of statements in advertisements inserted in newspapers and in circulars and other forms of advertising matter that the use of said device will stop bed-wetting and correct the bed-wetting habit. Respondents have on occasion furnished certain of said advertising matter to their lessees, who, in turn, make use of it in soliciting the rental of said device to members of the general public.

5. The Enurstone device consists of a metal and rubber pad and control box which is plugged into an electrical circuit. The pad is placed under the child with a bed sheet in between. At the onset of micturition the moisture closes the circuit causing a bell to ring and a light to light. The bell awakens the child and the purpose of the light is to let him know that he is in familiar surroundings so that he can go to the toilet and empty his bladder. The Enurstone

device is protected by letters patent issued to Dr. H. Wright Seiger and assigned by him to the respondents. There are other persons, firms and corporations who advertise and sell or lease devices which purport to operate on the same principle in competition with the respondents in interstate commerce.

6. The complaint, as amended, charges that the use of the respondents' "Enurtone" device will not be effective in stopping bed-wetting or correcting the bed-wetting habit:

(a) In cases involving organic defects or diseases;

(b) In cases of functional bed-wetting involving emotional tensions.

7. Enuresis is a medical term for bed-wetting. It can be divided into two general classifications—organic and functional. Organic enuresis ranges from infections of the urinary tract to congenital abnormalities and obstructions of the urinary tract. About 15 percent of the enuretics fall within this classification. Functional enuresis is due to slow maturation, habit, or emotional disturbances. Maturation is a normal function, a normal growth and development of the child. Maturation in relation to enuresis has to do with the normal ability of the child to prevent urination in bed without his knowledge. The urinary bladder has its nervous system and its muscle system and usually is fairly well matured by the time the child is four to six years old. In some children this maturing process may be earlier, and in others it may be delayed. Enuresis may also be due to careless habits rather than lack of maturation, and also due to emotional disturbances which either cause the enuresis or arise from the enuresis itself.

8. The use of respondents' device will have no effect upon organic enuresis. This device cannot change or correct any abnormality causing enuresis and will not be effective in removing or curing any underlying cause of organic disease. It is contended by the respondents that their device might be effective where bed-wetting is co-existent with organic conditions or where the bed-wetting persists after the organic cause has been removed. Neither the incidence of co-existence nor the persistence of bed-wetting after removal of the organic cause are sufficient to be significant. To permit unsupervised use of respondents' device in organic conditions on the off chance that the enuretic condition is co-existent with the organic condition might cause a delay in the proper treatment of the organic condition. Generally, when the organic cause has been removed, normal functioning follows, resulting in the disappearance of the enuretic condition.

9. The use of respondents' device in functional enuresis is considered to be effective except where emotional tensions exist. This has been described as where tension exists between the parent and child and the child is using bed-wetting to strike back at the parent or where tension exists as a result of the bed-wetting. In some instances the child may be ready to give up bed-wetting, but because of the tension can find no face-saving device for doing so. Where the emotional problem between parent and child arises from the bed-wetting, it is possible that by removing the enuresis through the use of the respondents' device the emotional problem itself will disappear. In those cases where the enuresis arises from the existing emotional tension and the child wants to be cooperative, the use of the respondents' device might serve as a face-saving medium to terminate bed-wetting. The use of the respondents' device would be of no value in those cases where the child is using the bed-wetting to strike back at the parents with no inclination to discontinue. In such circumstances psychiatric treatment of the whole family or the application of an old-fashioned remedy might be indicated. It is the opinion of the hearing examiner that public interest does not require a limitation of the use of respondents' device in functional enuresis because in some instances the subject may not be amenable to discipline.

CONCLUSIONS

1. The use by the respondents and their lessees of the representations hereinabove described, containing materially misleading statements and representations as to the effectiveness of respondents' device when used in connection with organic enuresis, has had and now has the tendency and capacity to mislead substantial numbers of the public into the erroneous belief that such statements and representations are true and to induce a substantial number of the members of the public to lease respondents' device because of such erroneous beliefs.

2. To the extent that the acts and practices of the respondents constitute, representations that the use of their device will be effective in the treatment of organic enuresis, such representations constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

3. The record in this proceeding fails to establish that the incidence of failure of respondents' device in cases of functional enuresis is such as to require the respondents to qualify representa-

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tions as to the effectiveness of their device when clearly limited to cases of other than organic enuresis.

ORDER

It is ordered, That respondents Maurice J. Feil and Leo A. Loeb, individually and as co-partners trading as The Enurtone Company, or trading under any other name or names, and their respective agents, representatives, employees and lessees, directly or through any corporate or other device in connection with the offering for sale, sale, leasing or distribution of a device known as "Enurtone," or any other device which functions in substantially the same manner, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

That the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit, unless expressly limited in a clear and conspicuous manner to cases of bed-wetting not involving organic defects or diseases.

OPINION OF THE COMMISSION

By KERN, *Commissioner*:

In his initial decision, the hearing examiner held that the respondents have engaged in unfair and deceptive acts and practices within the meaning of the Federal Trade Commission Act. Counsel supporting the complaint in appealing from that decision, among other things contends that the order to cease and desist contained therein is deficient and should be modified.

We are confronted here with a problem as old as the ages. It has for centuries plagued most of the inhabitants of most of the nations of the world other than those whose cultures omitted the use of beds. Ever since man began to evolve behavior patterns in civilizations growing increasingly complex, and which, in most instances, included houses and beds, he has been disturbed by his progeny's wetting of the latter. We learn from this proceeding that there is probably no universal panacea for anything in this troubled world, including bed-wetting. The respondents in mistaken self confidence represented in their advertising that they had the problem whipped. It is our conclusion, based on the record before us, that they did "but strut in pride and vaunt their empty claims."

The record discloses that respondents lease a device designated as "Enurtone" to lessees located in various states of the United States.

The lessees in turn rent the devices to members of the general public for use in cases of bed-wetting. Bed-wetting, scientifically known as enuresis, can be divided into two general classifications, organic and functional. The complaint, as amended, charges that in advertisements for inducing leasing and renting of the device, the respondents have represented that such device will stop bed-wetting and correct the bed-wetting habit in all cases; and it further alleges that the statements in that respect are false and deceptive inasmuch as the device will not be effective in stopping bed-wetting in cases involving organic defects or diseases or in cases in the functional category of bed-wetting which involve emotional tension. In the initial decision, the hearing examiner held that the respondents' advertising has contained materially misleading statements and representations as to the effectiveness of the device when used in connection with organic enuresis but he further found that the public interest does not require a limitation on claims for efficacy in cases of functional enuresis. The order contained in the initial decision to which counsel's appeal excepts directs that the respondents cease and desist from representing directly or indirectly:

That the use of such device is of value in stopping bed-wetting or in correcting the bed-wetting habit in cases of enuresis involving organic defects or diseases.

The above language is susceptible to a construction that the order's proscriptions are limited to specific claims that the device will be of value in stopping or correcting cases of bed-wetting involving organic defects or diseases. There, accordingly, is no assurance that the order would be understood to forbid continuance of general statements and representations that the device will be effective in stopping or correcting bed-wetting. The public interest plainly requires that such claims or promises for helping enuretics as may be used in respondents' future promotional matter be limited to cases of enuresis for which benefits reasonably may be expected to be afforded. That a requirement restricting such claims to enuresis cases of the type known to the medical or scientific fraternity as functional would not afford adequate guidance to the public as to the limitations of the device is obvious, however, and warrants no further comment. Hence, the order should be phrased so as to forbid representations of product value in stopping or correcting bed-wetting unless expressly limited to cases not involving organic defects or diseases. The order to cease and desist is being modified accordingly.

In the third numbered paragraph of the section designated in the initial decision as "Conclusions" the hearing examiner stated that the record fails to establish that the incidence of failure of respondents' device in cases of functional enuresis is such as to require respondents to qualify representations as to its effectiveness when limited to functional cases. To the extent that this statement may imply that adequate guidance would be afforded prospective purchasers were future claims for product value required to be expressly limited to functional enuresis, such conclusion is erroneous for reasons noted in the preceding paragraph. Hence, this conclusion of the initial decision also is being modified.

We also have considered the additional exceptions argued by counsel supporting the complaint in his appeal brief, these being referred to in the brief as secondary grounds of appeal. We deem those challenged rulings and findings of the hearing examiner to be free from substantial error, however, and this aspect of the appeal is being denied.

The brief submitted by counsel for respondents is designated "Answering Brief of Respondents and Respondents' Brief on Appeal." Although counsel for respondents seasonably filed notice of intention to appeal from the initial decision, respondents failed to file brief within thirty days after service of the initial decision as prescribed by Sec. 3.22(d) of the Commission's Rules of Practice for Adjudicative Proceedings. Respondents accordingly cannot be deemed to have perfected their appeal. Their brief, however, was filed within the time prescribed by the aforesaid rule for filing of answering briefs.

Under the Rules, no right is accorded counsel supporting the complaint to file brief in answer to the subjects argued in respondents' brief as appeal matters, that is, as bases for their contentions that this proceeding should be dismissed. Although we would be warranted under our rules in limiting our consideration of the brief of respondents to the matters urged in opposition to the appeal of counsel supporting the complaint, we nevertheless have reviewed the record in light of the brief's above-mentioned additional contentions. The Commission has determined, however, that the findings contained in the initial decision are based on the greater weight of the evidence received into the record and that the initial decision is otherwise free from substantial error save as to the matters previously discussed and respecting which the initial decision is being duly modified.

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Respondents' contentions of error are accordingly rejected. The initial decision, modified as noted above, is being adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon the appeal filed by counsel supporting the complaint from the initial decision of the hearing examiner; and the Commission having rendered its decision denying the appeal in part and granting the appeal to the extent noted and having determined, for reasons stated in the accompanying opinion, that the initial decision should be modified:

It is ordered, That the sentence designated by the figure 3 appearing on page 5 of the initial decision be, and it hereby is, modified to read as follows:

3. The record in this proceeding fails to establish that the incidence of failure of respondents' device in cases of functional enuresis is such as to require the respondents to qualify representations as to the effectiveness of their device when clearly limited to cases of other than organic enuresis.

It is further ordered, That the order to cease and desist contained in the initial decision be, and it hereby is, modified to read as follows:

It is ordered, That respondents Maurice J. Feil and Leo A. Loeb, individually and as copartners trading as The Enurstone Company, or trading under any other name or names, and their respective agents, representatives, employees and lessees, directly or through any corporate or other device in connection with the offering for sale, sale, leasing or distribution of a device known as "Enurstone," or any other device which functions in substantially the same manner, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

That the use of said device is of value in stopping bed-wetting or correcting the bed-wetting habit, unless expressly limited in a clear and conspicuous manner to cases of bed-wetting not involving organic defects or diseases.

It is further ordered, That the initial decision, as modified herein, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents shall, within sixty (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 the order to cease and desist.

IN THE MATTER OF
DURHAM'S BUSINESS COLLEGE ET AL.

CONSENT ORDERS, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7500. Complaint, May 21, 1959—Decisions, Oct. 6, 1959

Consent orders requiring Texas distributors of a correspondence course in civil and criminal investigation, operating under the name of "Central Detective Academy," to cease making in advertising and through salesmen false claims concerning employment, demand, and wages for graduates of said courses, limitation and selection of enrollees, competency of instructors, organization, status and size of business, qualifications or status of its salesmen, and the independent status of two wholly owned collection agencies.

Mr. Terral A. Jordan for the Commission.

No appearances for the respondents.

INITIAL DECISION BY LOREN H. LAUGHLIN, HEARING EXAMINER

The Federal Trade Commission (sometimes also hereinafter referred to as the Commission) issued its complaint herein on May 21, 1959, charging the above-named respondents with having violated the provisions of the Federal Trade Commission Act in certain particulars.

On August 25, 1959, there was submitted to the undersigned hearing examiner of the Commission for his consideration and approval "Agreements Containing Consent Orders To Cease And Desist," which had been entered into by and between Elmond F. Gau, individually and as an officer of said corporate respondent, and Harburd E. Tarpley, an individual trading and doing business as Central Detective Academy, and counsel supporting the complaint, under date of August 14, 1959, subject to the approval of the Bureau of Litigation of the Commission, which had subsequently duly approved the same.

On due consideration of such agreements, the hearing examiner finds that said agreements, both in form and in content, are in accord with §3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and that by said agreements the parties have specifically agreed to the following matters:

1. Respondent, Durham's Business College, is a corporation existing and doing business under and by virtue of the laws of the State of Texas. It formerly traded and did business as Central Detective Academy. Respondent Elmond F. Gau is an individual and is president of said corporate respondent. He also trades and does business