

Complaint

58 F.T.C.

IN THE MATTER OF

SIMES &amp; RESNICK, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

*Docket 8270. Complaint, Dec. 30, 1960—Decision, May 4, 1961*

Consent order requiring New York City furriers to cease violating the Fur Products Labeling Act by invoicing artificially colored fur products as natural; by failing to disclose on labels and invoices that certain fur products were dyed, bleached, or otherwise artificially colored; and by failing in other respects to comply with labeling and invoicing requirements.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Simes & Resnick, Inc., a corporation, and Irving Simes and Abraham Resnick, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling 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. Simes & Resnick, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business located at 242 West 30th Street, New York, New York.

Irving Simes and Abraham Resnick are officers of the said corporate respondent. These individuals formulate, direct and control the acts, practices and policies of the said corporate respondent. Their office and principal place of business is the same as that of the said corporate respondent.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the manufacture for introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution, in commerce, of fur products; and have manufactured for sale, sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce as the terms "commerce",

"fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they carried labels showing the name of the fur, without disclosing that the product was dyed, in violation of Section 4(1) of the Fur Products Labeling Act.

PAR. 4. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act, and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced in that they were not invoiced as required under the provisions of Section 5(b) (1) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that said fur products were invoiced to show that the fur contained therein was natural, when in fact such fur was bleached, dyed or otherwise artificially colored, in violation of Section 5(b) (2) of the Fur Products Labeling Act.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

*Mr. Harry E. Middleton, Jr.*, supporting the complaint.  
Respondents, *pro se*.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on December 30, 1960. The complaint charged respondents with misbranding and falsely and deceptively invoicing, fur products. Said acts and practices were charged to be in violation of the Federal Trade Commission Act and the Fur Products Labeling Act.

On February 28, 1961, counsel submitted to the undersigned hearing examiner an agreement, among respondents and counsel supporting the complaint, providing for the entry without further notice of a consent order. The agreement was duly approved by the Director, the Associate Director and the Assistant Director of the Bureau of Litigation.

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The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25(b) of the Rules of the Commission, that is:

A. An admission by all the respondent parties thereto of jurisdictional facts;

B. Provisions that:

1) The complaint may be used in construing the terms of the order;

2) The order shall have the same force and effect as if entered after a full hearing;

3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of:

1) The requirement that the decision must contain a statement of findings of fact and conclusion of law;

2) Further procedural steps before the hearing examiner and the Commission.

In addition the agreement contains the following permissive provisions: A waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

Having considered said agreement, including the proposed order, and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding; the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Simes & Resnick, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 242 West 30th Street, New York, New York.

2. Respondents Irving Simes and Abraham Resnick are individuals and officers of the corporate respondent. They formulate, di-

rect and control the acts and practices of said corporate respondent. Their address is the same as that of the corporate respondent.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents.

#### ORDER

*It is ordered*, That Simes & Resnick, Inc., a corporation, and its officers, and Irving Simes and Abraham Resnick, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, or the sale, advertising or offering for sale in commerce or the transportation or distribution in commerce of fur products or in connection with the sale, manufacture for sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

1. Misbranding fur products by:

A. Failing to disclose on labels that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

B. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Falsely or deceptively invoicing fur products by:

A. Failing to disclose on invoices that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact.

B. Failing to furnish to purchasers of fur products invoices showing all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

#### DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall on the 4th day of May 1961, become the decision of the Commission; and, accordingly:

*It is ordered*, That the respondents herein 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.

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MAURICE J. FEIL ET AL. TRADING AS  
THE ENURTONE COMPANY

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

*Docket 6564. Modified order, May 5, 1961*

Order modifying desist order of Oct. 2, 1959 (56 F. T. C. 364), to comply with decree of the Ninth Circuit Court of Appeals, by substituting the words "caused by" for the word "involving".

Before *Mr. Earl J. Kolb*, hearing examiner.

*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.

ORDER MODIFYING CEASE AND DESIST ORDER TO BRING IT INTO CONFORMITY  
WITH THE DECREE OF THE UNITED STATES COURT OF APPEALS FOR THE  
NINTH CIRCUIT

This matter having been brought before the Commission by the appeal of counsel supporting the complaint from the initial decision of the hearing examiner entered on the 24th day of February 1959; and, the Commission having heard the appeal on the pleadings, testimony, stipulation, exhibits, briefs and oral argument of counsel; and

The Commission, after duly considering the whole record and being fully advised in the premises, having on the 2nd day of October 1959, issued its final order in which it modified the initial decision and the order to cease and desist entered by examiner as aforesaid and adopted the initial decision as modified as the decision of the Commission; and

Respondents having filed in the United States Court of Appeals for the Ninth Circuit their petition for the review of the order to cease and desist issued by the Commission on the 2nd day of October 1959, as aforesaid, praying that the order be set aside or, in the alternative, be modified to conform to the form of the order contained in the initial decision of the examiner entered on the 24th day of February 1959, as aforesaid; and

The United States Court of Appeals for the Ninth Circuit having on the 22nd day of December 1960 (285 F.2d 879 [6 S.&D. 875]), handed down its opinion in which it, for reasons therein stated, modified the prohibitory paragraph of the order entered by the

Commission on the 2nd day of October 1959, as aforesaid, by eliminating therefrom the word "involving" and substituting therefor the words "caused by" so that the paragraph of the order shall read as follows:

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 caused by organic defects or diseases.

And as thus modified, affirmed the order and directed enforcement; and on the 18th day of January 1961, entered its final decree in which it modified the final order of the Commission as hereinabove set forth and as thus modified, affirmed said order and commanded Maurice J. Feil and Leo A. Loeb, individually and as copartners trading as The Enurstone Company to forthwith obey and comply with the terms of the order as thus modified; and the time allowed for filing a petition for certiorari having expired and no such petition having been filed; and

The Commission being of the opinion that its said order to cease and desist, issued on the 2nd day of October 1959, as aforesaid, should be brought into conformity with the aforesaid decree of the United States Court of Appeals for the Ninth Circuit modifying the said order to cease and desist, as aforesaid;

*Now, therefore, it is hereby ordered*, That the order to cease and desist issued by the Commission on the 2nd day of October 1959, as aforesaid, be 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 caused by organic defects or diseases.

*It is further ordered*, That respondents shall, within 30 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

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they have complied with the order to cease and desist as hereinabove modified.

*It is further ordered*, That the modified order as here issued shall be served upon respondents in the same manner as was the original order to cease and desist.

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IN THE MATTER OF

MORTON'S, INC., ET AL.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE  
FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

*Docket 6976. Modified order, May 5, 1961*

Order modifying desist order of Feb. 25, 1960 (56 F. T. C. 965), to comply with decree of First Circuit Court of Appeals, by eliminating Paragraph A (3) and Paragraph D.<sup>1</sup>

Before *Mr. William L. Pack*, hearing examiner.

*Mr. Harry E. Middleton, Jr.*, and *Mr. Thomas A. Ziebarth* for the Commission.

*Guterman, Horvitz & Rubin*, of Boston, Mass., for respondents.

ORDER MODIFYING ORDER TO CEASE AND DESIST SO AS TO BRING IT INTO  
CONFORMITY WITH THE DECREE OF THE UNITED STATES COURT OF  
APPEALS FOR THE FIRST CIRCUIT

This proceeding having been heard by the Commission upon its review of the whole record, including briefs and oral argument; and the Commission having rendered its decision and having issued its order to cease and desist on February 25, 1960; and

Respondents having filed in the United States Court of Appeals for the First Circuit their petition to review and set aside the order to cease and desist, and that Court having rendered its decision on January 24, 1961 (286 F.2d 158 [7 S.&D. 6]), eliminating therefrom Paragraph A (3) which prohibited the misbranding of fur products by—

(3) Failing to set forth all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of the labels;

and setting aside Paragraph D which prohibited respondent from—

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<sup>1</sup> The Paragraphs set aside read as follows:

"(3) Failing to set forth all the information required under Section 4(2) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder on one side of the labels;"

"D. Making pricing claims or representations of the type referred to in Paragraph C above, unless there is [sic] maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based;"

D. Making pricing claims or representations of the type referred to in Paragraph C above, unless there is [*sic*] maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based;

and the Court having issued its decree on January 25, 1961, affirming and directing enforcement of the Commission's order as thus modified; and the time allowed for filing a petition for certiorari having expired and no such petition having been filed; and

The Commission being of the opinion that its said order to cease and desist, issued February 25, 1960, should be brought into conformity with the aforesaid decree of the United States Court of Appeals for the First Circuit modifying the said order to cease and desist, as aforesaid;

*Now, therefore, it is hereby ordered.* That the aforesaid order to cease and desist be modified to read as follows:

*It is ordered.* That the respondents, Morton's, Inc., a corporation, and its officers, and Hyman Gondelman and Morton N. Gondelman, individually and as officers of said corporation, and said respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce of any fur product, or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which has been made in whole or part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

(1) Failing to affix labels to fur products showing in words and figures plainly legible all information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

(2) Setting forth on labels affixed to fur products:

- (a) Non-required information mingled with required information;
- (b) Required information in handwriting.

B. Falsely or deceptively advertising fur products through the use of any advertisement, representation, public announcement, or notice, which is intended to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of fur products, and which fails to disclose the name or names of the animal or animals producing the fur or furs contained in the fur product, as set forth in

the Fur Products Name Guide and as prescribed under the Rules and Regulations.

C. Falsely or deceptively advertising fur products through use of any advertisement, representation, public announcement or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products and which represents directly or by implication that the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually sold such products in the recent regular course of their business.

*It is further ordered,* That respondents shall, within 30 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 as hereinabove modified.

*It is further ordered,* That the modified order as here issued shall