

Syllabus

IN THE MATTER OF

DELMAR M. RANDALL, DOING BUSINESS AS THE COLRAN
INSTITUTE, AND MERVYON E. RANDALLCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4886. Complaint, Jan. 14, 1943—Decision, Oct. 9, 1944*

As respects the remedying of wrinkles and lines in the face and neck, it has been established that these are not due to any condition of the muscles but are due to the fact that as one grows older the skin tends to lose its elasticity, with the result that it sags, causing wrinkles and lines to develop, the only recognized or effective treatment for which is through a "face lifting" operation, whereby a portion of the skin is removed and the remainder drawn together, there being no way known to science aside from surgery whereby the skin can be caused to shrink.

Where a husband and wife engaged in the interstate sale and distribution of their "Colran Method" of face lifting without surgery or "Colran Method of nonsurgical rejuvenation," consisting of (1) an electrical device which they designated as "The Electrical Face Rejuvenator," and (2) a small machine with two electrodes attached, designated "The Colran Electro-Lifter," and (3) cosmetic preparations designated as "Cleansing Oil," "Contact Solution," "Special Cleansing Solution" and "Conditioning Oil," function of which was to cleanse the skin and facilitate contact between it and the electrodes; through statements in their advertisements in newspapers and periodicals, circulars, leaflets and other advertising media (in which they also included depictions purporting to illustrate the benefits resulting from the use of their said method), directly or by implication—

(a) Represented that through use thereof face lifting could be accomplished without resort to surgery; that wrinkles, lines, and sagging skin in the face and neck could be eliminated and replaced with revitalized, youthful skin; that it would restore to user's face the contour of youth and eliminate the signs of age; and would rejuvenate the skin of the face and neck through rebuilding and strengthening the muscles underlying the skin, assertedly attached thereto, and, through a natural form of exercise automatically tighten and fill out the same;

The facts being that face lifting can be accomplished only through a surgical operation; muscles of the face and neck are not attached to the skin, but to underlying tissue and fat; any activation of such muscles which might be caused by their device would be wholly ineffective insofar as contraction of the skin is concerned, and their said method could not bring about the result claimed; and

(b) Falsely represented or implied, through use of the words "rejuvenator" and "lifter" in their trade names, that their said "method" would rejuvenate the skin and accomplish the result known as face lifting;

With tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, properties, and efficacy of their products, and thereby cause it to purchase substantial quantities thereof:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair and deceptive acts and practices in commerce.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Jesse D. Kash for the Commission.

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 Delmar M. Randall, an individual, trading as The Colran Institute and Mervyon E. Randall, an individual, hereinafter referred to as respondents, have violated the provisions of 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 setting forth its charges in that respect as follows:

PARAGRAPH 1. Respondent, Delmar M. Randall, is an individual, trading as The Colran Institute, with his principal place of business located at 3809 Main Street in the city of Houston, State of Texas. Respondent Mervyon E. Randall, is an individual, with her principal place of business located at 3809 Main Street in the city of Houston, State of Texas. Said last named respondent is actively engaged, together with the respondent, Delmar M. Randall, in the operation of the business of The Colran Institute and the dissemination of the advertising matter hereinafter set forth.

PAR. 2. Said respondents are now, and for several years last past have been, engaged in the sale of an electrical device variously designated as "The Electric Facial Rejuvenator," "The Colran Electro-Lifter" and "The Electro-Lifter," together with certain preparations in the nature of cosmetics designated as "Cleansing Oil," "Contact Solution," "Special Cleansing Solution" and "Conditioning Oil," advertised as the "Colran Method of Face Lifting without Surgery."

In the course and conduct of their business respondents cause their said electrical device and preparations, hereafter referred to as method, when sold, to be transported from their place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said Method 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their method by United States mails, and by various other means in commerce as commerce is defined in the Federal Trade Commission Act; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said Method, by various means for the purpose of inducing, and which were likely to induce, directly or indirectly, the purchase of their said Method in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth by United States mails, by advertisements inserted in newspapers and periodicals, and by circulars, leaflets, pictures and other advertising, are the following:

Surgery Eliminated!

Face lifting can now be accomplished without surgery. The pain, discomfort, and possibility of ugly scars that have caused so many women to decide to grow old gracefully is no longer necessary. Sagging faces and necks, loose wrinkled skin can be replaced with a revitalized, youthful, glowing face . . . with firm muscles and the soft rounded contours of youth and health.

THE ELECTRIC Facial Rejuvenator Non-Surgical FACE LIFTING METHOD

The Colran Method of Non-Surgical Facial Rejuvenation is the answer to wrinkles and loss of contour and signs of age.

You must not allow tell-tale wrinkles, drooping mouth lines, sagging chins and signs of old age—replace the loveliness of glowing youth! You have no excuse for NOW you know the answer to this aging problem!

. . . it is building new contour every treatment you have!

The skin is attached to the muscles. Sags and wrinkles and bagginess of the skin are due to relaxation and weakened condition of the underlying muscles to which it is attached. The Electro-Lifter rebuilds and strengthens these muscles through a natural form of exercise that automatically tightens and fills out the skin which is attached to these muscles, thus removing wrinkles and hollows and restoring firmness and natural contour to the face.

. . . the exercise of the muscles causes a greatly increased blood supply to both the muscles and the skin, and helps in this way to eliminate many superficial conditions. The muscle contractions also cause drainage of the glands that lay between the skin and muscle which helps to clean the pores and soften the skin with natural oils.

The results obtained by The Colran Method should last from three to five years.

Such advertising literature also includes a pictorial representation purporting to illustrate the benefits resulting from treatment by respondents' method. Such depiction is in a folder bearing on one side the words "Young and Happy" and on the other side the words "OLD and SAD," and containing the representation "Face lifting can now be accomplished without Surgery." When the half of the folder bearing the words "Young and Happy" is turned back it discloses a picture of half of a woman's face which appears youthful in appearance and unmarred by wrinkles and blemishes. When the side of the folder bearing the words "OLD and SAD" is turned back it discloses the other half of the face which appears aged and marred by wrinkles.

The respondents also disseminate among their dealers and distributors various types of literature containing representations similar or identical to those set out herein above which are designed for the use of such dealers and distributors in soliciting the sale of their said Method among the purchasing public.

PAR. 4. Through the use of the statements and representations hereinabove set forth and others of similar import not specifically mentioned herein the respondents represent that face lifting can be accomplished without surgery; that sagging faces, chins and necks, loose wrinkled skin, drooping mouth lines and signs of age on the face and neck can be eliminated by the use of said method and that such conditions will be replaced with a revitalized, youthful and glowing appearance with firm muscles and the soft rounded contours of youth and health; that the use of said method rejuvenates the skin of the face and neck; that said method will build a new contour of the face and neck; that the skin of the face and neck is attached to the muscles and sags, wrinkles and bagginess are due to relaxation and a

weakened condition of the underlying muscles to which it is attached; that respondents' method rebuilds and strengthens the muscles resulting in an automatic tightening and filling out of the skin which removes wrinkles and hollows and restores firmness and the natural contour of the face; that the exercises of the muscles provided by the use of said method greatly increases the blood supply to both the muscles and the skin thereby aiding in the elimination of superficial skin conditions generally; that the muscle contractions resulting from the use of said method cause drainage of the glands lying between the skin and muscles which is helpful in cleansing the pores and results in the softening of the skin through the secretion of natural oils and that the results obtained through the use of respondents' method will last from three to five years. Through the use of the pictorial representations above referred to respondents represent that the use of their said method has brought about the improved conditions as disclosed therein.

PAR. 5. The foregoing statements and representations are false, misleading and deceptive. In truth and in fact, face lifting can not be accomplished without surgery. The expression "Face Lifting," as understood both by the medical profession and the laity, applies to a surgical procedure in which some of the surplus skin of the neck and face is removed by means of incisions at the hairline, behind the ears or at the corners of the eyes. The results accomplished by such procedure can not be duplicated or approached by a mechanical manipulation of the face, neck and underlying muscles as provided by the electrical current produced by respondents' device. Sagging faces, chins and necks, loose wrinkled skin, drooping mouth lines, signs of old age on the face and neck can not be eliminated or removed by the use of said Method nor will such conditions be replaced with a revitalized skin, firm muscles, and soft rounded contours of youth and health. Said method will not rejuvenate the skin of the face and neck nor will it build a new contour of the face and neck. The skin of the face and neck is not attached to muscles and sags, wrinkles and bagginess of the face and neck are not due primarily to the weakened and relaxed condition of muscles. Respondents' method can not rebuild muscles and any strengthening of muscles brought about by its use will not result in tightening and filling out of the skin nor will its use restore firmness or the natural contour of the face. While the stimulation to muscles resulting from the use of said method may provide some aids to the circulation of blood at the site of application, this stimulation and increased circulation is only temporary and will exert no significant effect upon the structure or appearance of the skin and will have no material effect upon superficial skin conditions generally. Said method will be of no assistance in cleansing the pores of the skin except superficially and will have no significant effect upon the secretion of natural oils by the skin. Any possible benefits which may result from the use of said method will be temporary and it can not be stated that they will last from three to five years or for any other period of time. The pictorial representation purporting to represent and illustrate the results achieved through the use of respondents' method does not truthfully depict the actual appearance of the subject and said method does not and can not cause or result in the apparent benefits represented by the use of such depiction.

While some of the cosmetic preparations sold and distributed by respondents as a part of their method have certain cleansing and emollient properties and their Contact Oil tends to provide a suitable contact for the device with the skin, the said device and cosmetic preparations used separately, or in connection with each other will not and can not provide the results claimed by respondents in their advertising matter hereinabove set forth.

PAR. 6. The use by the respondents of their trade name "The Electric Facial Rejuvenator" for their device, and the use of the trade names "The Colran Electro-Lifter" and "The Electro-Lifter," when used in connection with statements with respect to face lifting are in themselves misleading and deceptive in that they serve as representations that said device will rejuvenate the skin and will lift the face, both of which representations are false.

PAR. 7. The respondents' said acts and practices, as hereinabove set forth, serve also to place in the hands of unscrupulous or uninformed dealers and distributors a means and instrumentality whereby, in the sale and distribution of respondents' method, such parties may mislead and deceive the purchasing public in the manner and method as herein described.

PAR. 8. The use by the respondents of the foregoing false, deceptive and misleading statements, representations, depictions and advertisements disseminated as aforesaid with respect to their said device has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and depictions are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said device and cosmetics.

PAR. 9. The acts and practices of the respondents, 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 14, 1943, issued and subsequently served its complaint in this proceeding upon the respondents, Delmar M. Randall, an individual, doing business as The Colran Institute, and Mervyon E. Randall, an individual, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of that act. After the filing of respondents' answer, testimony and other evidence in support of and in opposition to the allegations of the complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and such testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission, hav-

ing 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, Delmar M. Randall, is an individual, who for some three years immediately preceding April, 1942, was engaged in business under the name of The Colran Institute, with his principal office and place of business located at 3904 Main Street, Houston, Tex. Respondent, Mervyon E. Randall, is the wife of respondent, Delmar M. Randall, and participated actively with him in the operation of the business known as The Colran Institute and in the dissemination of the advertising matter thereafter described. Both of the respondents now reside in Sanderson, Tex.

During the period of time in question respondents were engaged in the sale of an electrical device designated by them as "The Electric Facial Rejuvenator" and as "The Colran Electro-Lifter," together with certain cosmetic preparations designated by them as "Cleansing Oil," "Contact Solution," "Special Cleansing Solution," and "Conditioning Oil." The electrical device and the several cosmetic preparations were advertised together by respondents as "The Colran Method of Face Lifting Without Surgery" and as "The Colran Method of Non-Surgical Facial Rejuvenation."

PAR. 2. Respondents caused their device and preparations, when sold, to be transported from their place of business in the State of Texas to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintained a course of trade in their products in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business and for the purpose of inducing the purchase of their products, respondents disseminated and caused the dissemination of numerous advertisements concerning their products by means of the United States mails and by various other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondents also disseminated and caused the dissemination of advertisements concerning their products by various means for the purpose of inducing and which were likely to induce, directly or indirectly, the purchase of their products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

Among the typical of the various statements contained in such advertisements, disseminated by means of the United States mails, by insertion in newspapers and periodicals, and by means of circulars, leaflets and other advertising media, were the following:

THE ELECTRIC Facial Rejuvenator Non-Surgical FACE LIFTING METHOD.
(Comm. Ex. 6-B)

Surgery Eliminated!

Face lifting can now be accomplished without surgery.

The pain, discomfort, and possibility of ugly scars that have caused so many women to decide to grow old gracefully is no longer necessary.

Sagging faces and necks, loose wrinkled skin can be replaced with a revitalized, youthful, glowing face . . . with firm muscles and the soft rounded contours of youth and health. (Comm. Ex. 6-A)

The Colran Method of Non-surgical Facial Rejuvenation is the answer to wrinkles and loss of contour and signs of age. * * * You must not allow tell-tale wrinkles, drooping mouth lines, sagging chins and signs of old age—replace the loveliness of glowing youth! You have no excuse for NOW you know the answer to this aging problem! (Comm. Ex. 6-B)

* * * it is building new contour every treatment you have! (Comm. Ex. 6-B)

In addition to these and other verbal representations, respondents also used in their advertisements pictorial representations purporting to illustrate the benefits resulting from the use of respondents' method.

PAR. 4. Through the use of these statements and representations and others of similar import, respondents represented, directly or by implication, that through the use of their method face lifting could be accomplished without resort to surgery; that through the use of such method wrinkles, lines, and sagging skin in the face and neck could be eliminated and such conditions replaced with revitalized, youthful skin; that such method would restore to the user's face the contour of youth and eliminate the signs of age; and that such method would rejuvenate the skin of the face and neck.

PAR. 5. Respondents' device is a small electrical machine to which are attached two electrodes. When the machine is in use these electrodes are applied to various places on the face and neck. The machine is equipped with a switch for regulating the electric current. The various cosmetic preparations supplied by respondents with the machine were merely for the purpose of cleansing the skin and facilitating the contact between the electrodes and the skin. The theory upon which respondents based their claims for the device was summarized in their printed instructions as follows:

The skin is attached to the muscles. Sags and wrinkles and bagginess of the skin are due to relaxation and weakened condition of the underlying muscles to which it is attached. The Electro-Lifter rebuilds and strengthens these muscles through a natural form of exercise that automatically tightens and fills out the skin which is attached to these muscles, thus removing wrinkles and hollows and restoring firmness and natural contour to the face. (Comm. Ex. 5, p. 3)

PAR. 6. The record establishes that wrinkles and lines in the face and neck are not due to any condition of the muscles but are due to the fact that as one grows older the skin tends more and more to lose its elasticity, with the result that it sags, causing wrinkles and lines to develop. In such cases the only recognized or effective treatment is through the surgical operation commonly known as "face lifting," an operation whereby a portion of the skin is removed and the remaining parts drawn together. Aside from surgery there is no way known to science whereby the skin can be caused to shrink or contract.

The muscles of the face and neck are not attached to the skin but are attached to underlying tissue and fat, and any activation of the muscles which might be caused by respondents' device would be wholly ineffectual insofar as the contraction of the skin is concerned. While the movement of certain muscles of the face and neck results in the movement of the skin,

such result is due to the relation between the muscles and the tissue or fat underlying the skin and not to any attachment between the muscles and the skin itself.

Respondents' method is therefore incapable of removing wrinkles, lines, and sagging skin from the face and neck or replacing such conditions with revitalized, youthful skin. Nor can the use of such method restore to the user's face the contour of youth, eliminate the signs of age, or rejuvenate the skin of the face and neck. Respondents' method is likewise wholly incapable of bringing about the result known as face lifting. As pointed out above, face lifting can be accomplished only through a surgical operation.

PAR. 7. The Commission therefore finds that the representations made by respondents with respect to their device and cosmetic preparations, as set forth in paragraphs 3 and 4 hereof, were erroneous and misleading and constituted false advertisements.

PAR. 8. The Commission finds further that the trade names "The Electric Facial Rejuvenator" and "The Colran Electro-Lifter," used by respondents to designate and describe their device, constituted false advertisements in that such names represented or implied through the use of the words "Rejuvenator" and "Lifter" that respondents' device would rejuvenate the skin and would accomplish the result known as face lifting.

PAR. 9. The use by respondents of these false advertisements, had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public with respect to the nature, properties, and efficacy of respondents' products, and the tendency and capacity to cause such portion of the public to purchase substantial quantities of such products as a result of the erroneous and mistaken belief so engendered.

CONCLUSION

The acts and practices of the respondents, as herein found, were all to the prejudice of the public, and constituted 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, the answer of respondents, testimony and other evidence taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and the exceptions to such report, and brief in support of the complaint (no brief having been filed by respondents and oral argument not having been requested); and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Delmar M. Randall, individually, and trading as The Colran Institute, or trading under any other name, and Mervyon E. Randall, and their agents, representatives, and employees, directly or through any corporate or other device, in connection with the

offering for sale, sale, or distribution of respondents' electrical device designated "The Electric Facial Rejuvenator" and "The Colran Electro-Lifter," and respondents' cosmetic preparations designated "Cleansing Oil," "Contact Solution," "Special Cleansing Solution," and "Conditioning Oil," or any other products of a substantially similar nature or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication:

(a) That face lifting can be accomplished without surgery.

(b) That the use of respondents' products, or any of them, will lift the face.

(c) That the use of respondents' products, or any of them, will remove wrinkles, lines, or sagging skin from the face or neck, or replace such conditions with revitalized, youthful skin.

(d) That the use of respondents' products, or any of them, will restore to the user's face the contour of youth, or eliminate the signs of age.

(e) That the use of respondents' products, or any of them, will rejuvenate the skin.

or which advertisement:

(f) Uses the word "Rejuvenator," or any word of similar import, alone or in connection with any other word or words, to designate, describe, or refer to respondents' device.

(g) Uses the word "Lifter," or any word of similar import, alone or in connection with any other word or words, to designate, describe, or refer to respondents' device.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase of said products in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement contains any representation prohibited in paragraph 1 hereof.

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.

Complaint

39 F. T. C.

IN THE MATTER OF
HOWARD CLOCK CORPORATION

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

Docket 5119. Complaint, Jan. 24, 1944—Decision, Oct. 9, 1944

Where the name "Howard," developed and used since 1842 by the original founders of the E. Howard Watch Clock Co. and its successors to identify the watches and clocks sold by them, had become widely and favorably known to the purchasing public for the high standards of workmanship and quality of the products sold under that name, whereby manufacturers of said products had come to enjoy a profitable business and substantial good-will; and thereafter a corporation engaged in the manufacture, sale and distribution of an electric clock—

Represented, directly and by implication, through the use of the word "Howard" in its corporate name, in such statements in its advertising matter as "The famous HOWARD," "The dependable Howard," "This new Howard model," "Howard precision-built," "This Howard creation," and "A Howard clock should last a lifetime," and on its said clocks and in other ways, that said products were produced by the makers of the Howard watches and clocks long familiar to the public as the product of the original E. Howard Watch and Clock Co. and its successors; The facts being its business was organized in 1940, no person by the name of Howard had ever been associated with its corporate organization, it had never had any connection with either the original E. Howard Watch & Clock Co. or its successors in interest, and its said clocks were not made by or purchased from the makers of the well-known Howard watches and clocks;

With the result of causing many members of the purchasing public to believe that its said business was connected with and that its said clocks were made by or purchased from the makers of the well-known watches and clocks, and of causing them to purchase its products in substantial number in reliance upon the truth of the aforesaid representation and designations:

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.

Before *Mr. Miles J. Furnas*, trial examiner.
Mr. S. F. Rose for the Commission.

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 Howard Clock Corporation, hereinafter referred to as respondent, has violated the provisions of 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: