

IN THE MATTER OF

ROBERT SHELDON, ET AL. TRADING AS REJUVENATION
CENTER LTD.

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

Docket C-2462. Complaint, Oct. 4, 1973—Decision, Oct. 4, 1973.

Consent order requiring a San Antonio, Tex. firm operated principally to promote a cosmetic process called a rejuvenation treatment, among other things to cease misrepresenting the nature, safety and results of its cosmetic rejuvenation process which involves chemical skin peeling. Further, the firm is required to obtain from each prospective customer a physician's certificate specifying the client's ability to undergo the process; to provide a 3-day cooling-off period during which clients may cancel their contracts, and to devote no less than 15 percent of their advertising to disclosures as to the procedures used and dangers inherent in the process. The Commission was successful in obtaining from the United States District Court for the Western District of Texas, a temporary injunction enjoining respondent from engaging in the challenged practices pending disposition of the Commission proceeding.

Complaint
Appearances

For the Commission: *Donald Higginbatham* and *James B. Brookshire*.

For the respondents: *Leroy Morgan Jahn*, San Antonio, Tex.

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 Robert Sheldon, Beverlee Sheldon, also known as Beverlee Choate, and Terry Lee Armas, III, individuals, trading and doing business as Rejuvenation Center, Ltd., hereinafter referred to as respondents, have violated Sections 5 and 12 of said Act, and it appearing to the Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Robert Sheldon, Beverlee Sheldon, also known as Beverlee Choate, and Terry Lee Armas, III, are individuals trading and doing business as Rejuvenation Center, Ltd., with their offices and principal place of business located at 8151 Broadway, Suite 110, San Antonio, Tex.

PAR. 2. In the operation of Rejuvenation Center, Ltd., respondents promote on their own behalf a cosmetic process called a rejuvenation treatment which involves the application of certain chemical solutions to the face, or various other portions of the bodies of their clients for the purported purpose of taking away or diminishing wrinkles, blemishes, freckles, lines, spots or other manifestations of aging by peeling the upper layers of skin from the treated areas. After the solutions are applied to the client's skin, bandages are then applied to the treated areas for several days, after which time, the bandages are removed, and the upper layers of skin, destroyed by the process, are peeled away.

PAR. 3. In the course and conduct of their business as aforesaid, respondents promote their cosmetic process by advertising over television and in newspapers of general circulation which are distributed by mail in states other than the state in which they are printed. In addition, respondents maintain at least one agent in the State of Okla. for the purpose of soliciting prospective clients in Oklahoma and transporting them to respondents' place of business in San Antonio, Tex., for application of the cosmetic process. As a result of such newspaper advertisements and as a

Complaint

83 F.T.C.

result of respondents' maintenance of an agent located in Okla., respondents have maintained a substantial course of trade in commerce, as "commerce" is used in Sections 5 and 12 of the Federal Trade Commission Act, and as a result of such newspaper advertising and the utilization of such out-of-state agent have disseminated and caused to be disseminated false advertisements by United States mail, and in commerce within the meaning of Section 12(a)(1) of the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business, and for the purpose of inducing the purchase of their cosmetic process, respondents directly and through their agents have made and are now making numerous statements and representations in advertisements inserted in newspapers of general circulation, in other promotional materials and during oral sales presentations. Typical and illustrative of such written or oral statements and representations contained in said advertisements, but not all inclusive thereof, are the following:

The Rejuvenation process requires no cutting, scraping, abrasives or machines. It consists of a solution, which when applied to the skin regenerates the epidermis, restoring the elasticity, creating a fine textured skin, eliminating wrinkles, freckles and brown spots.

New biochemical face lift lets you look 10 to 20 years younger in 7 days.

Middle-aged people may actually look from 10 to 20 years younger. * * *

Because these solutions work only in the uppermost layer * * * * the process is harmless and non-medical.

* * * facial rejuvenation is now widely accepted by the medical profession.

PAR. 5. Through the use of the above advertisements, and others of similar import and meaning, but not expressly set out herein, and by oral statements and representations made by respondents and their agents, respondents have represented and are now representing directly or by implication that:

1. Respondents' cosmetic process is nonsurgical in nature.

2. Respondents' cosmetic process is generally painless and involves no abrasives or creams.

3. The potential discomfort possibly resulting from respondents' process is no more severe than that normally associated with a sunburn.

4. Respondents' cosmetic skin-peeling process will permanently remove signs of aging.

5. Respondents are trained professionals, and that Beverlee Sheldon, also known as Beverlee Choate, is a registered nurse and Robert Sheldon is a pharmacist and chemist.

6. Respondents' prospective clients need not seek medical advice, or have allergy or skin sensitivity tests conducted prior to receiving the skin peeling process.

7. Respondents' cosmetic process will cause their clients to appear to from 10 to 20 years younger than their actual chronological age.

8. The application of respondents' cosmetic process is a safe procedure free from possible serious side effects or complications.

9. Respondents' method of cosmetic process is widely accepted by the medical profession as performed by respondents.

10. Respondents are duly licensed to practice medicine or to prescribe or dispense drugs or cosmetics which by law may be prescribed or dispensed only by a doctor or pharmacist.

PAR. 6. In truth and in fact:

1. Respondents' cosmetic process is a procedure involving chemical surgery in the removal of the upper layers of skin.

2. Respondents' cosmetic process involves abrasive chemicals and creams which burn the upper layers of skin to create peeling and is in fact painful in many cases.

3. The potential discomfort possibly resulting from respondents' cosmetic process is in some cases much more severe than that normally associated with a sunburn. The potential discomfort of cosmetic face peels as conducted by respondents can and may result in severe pain and long-lasting or permanent discoloration of the skin.

4. Only minor manifestation of aging, such as very fine wrinkles in carefully selected patients, can be removed by face peeling under optimum medical conditions. Even when conducted by professional cosmetic surgeons under controlled clinical conditions and producing good results, the more youthful appearance will rarely last over 18 months, at the end of which time the patient will again appear his or her actual chronological age.

5. Respondents are not trained professionals. Beverlee Sheldon, also known as Beverlee Choate, is not a registered nurse, nor is Robert Sheldon either a chemist or licensed pharmacist.

6. Prospective clients should consult with their physicians regarding the advisability of receiving a cosmetic face peel, since those with sensitive skin or a history of allergies are often refused the process by cosmetic surgeons due to the complication rate involved.

7. Those receiving cosmetic face peels cannot reasonably expect that their appearance will be altered by more than a year or two

Complaint

83 F.T.C.

from their actual chronological age, even with the best results obtained by a cosmetic surgeon.

8. Respondents' process is not a safe procedure in nature, but a process involving a controlled burning of the skin known as chemo-surgery, which is inherently dangerous unless performed by professional cosmetic surgeons under closely-controlled clinical conditions. When not properly administered, the process may result in severe pain, burning of the skin, infection, disease or scarring.

9. Facial rejuvenation involving cosmetic skin peeling is not widely accepted by the medical profession, but, in fact, many plastic surgeons will not conduct face peels on patients at all because of the possible adverse side effects, and normally many more patients who request face peels are refused the process than are given the treatment, due to allergies, skin sensitivity and other factors.

10. Respondents are not licensed to practice medicine or to prescribe or dispense drugs or cosmetics which by law may be prescribed or dispensed only by a doctor or pharmacist.

PAR. 7. In the course and conduct of their business, respondents, directly or through their agents have represented in advertisements the asserted advantages of their cosmetic process as hereinabove described. Respondents or their agents have failed to disclose important and material facts to prospective clients concerning the application of their cosmetic process involving skin peeling. In no case have respondents' advertising or oral representations disclosed:

1. The need for prospective clients to consult with a physician concerning skin sensitivity or possible allergic reactions prior to receiving the application of respondents' cosmetic process.

2. That clients may experience severe discomfort or possible intense pain as a result of respondents' application of the chemicals used in their cosmetic process.

3. That clients will be subject to the risk of irritation, infections and other skin disease, as a result of the treatment.

4. That permanent scarring to the face, or various other parts of the body may result from the application of the chemical solutions used in respondents' cosmetic process.

The consequences described in above paragraph have, in fact, occurred, and to a reasonable medical certainty can be expected to occur, and respondents knew, and had reason to know, that they

could be expected to occur, when clients did not seek medical consultation prior to the application of respondents' cosmetic process.

Therefore, the advertisements referred to in Paragraph Seven are false and misleading and the acts and practices referred to in said paragraph are unfair and deceptive.

PAR. 8. For the purpose of inducing the purchase of their cosmetic face peeling process respondents directly and through their agents entice members of the public with advertisements of "Look 20 years younger in 7 days" and like advertisements designed to attract members of the purchasing public concerned with aging skin, and with offers of free consultation involving no obligation. In most cases, respondents directly or through their agents do not disclose details of their system unless and until a prospective client visits their place of business or agent. When members of the purchasing public visit the center, they have been subjected to emotional sales tactics for the purpose of persuading them to sign a contract for the application of the cosmetic skin peeling process and to make a substantial downpayment, without being afforded a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligation involved, the seriousness of the procedure involved, or the possibilities of discomfort, pain, disease or disfigurement related thereto. Respondents employ the following tactics:

1. Representing that the consumer demand for the cosmetic skin peeling process is very substantial and that it has been widely accepted by the medical professions and has become popular with members of the performing arts.

2. Catering primarily to the highly emotional desire of the aging, especially middle-aged and elderly women to regain a youthful appearance.

3. Inducing prospects to sign contracts and/or make downpayments, and to sign medical releases before they have consulted a medical doctor and freely and openly discussed with such doctor the medical risks involved in the face peeling process.

Therefore, the advertisements referred to in Paragraph Eight were and are false and misleading, and the acts and practices set forth in such paragraph were and are unfair and deceptive.

PAR. 9. In the course and conduct of their business, and at all times mentioned herein, respondents and their agents have been and are in substantial competition in commerce in the sale of their cosmetic process of skin peeling.

Complaint

83 F.T.C.

PAR. 10. The use by respondents, directly and through their agents, of the unfair and deceptive representations and practices has had and now has the capacity and tendency to mislead consumers and to unfairly influence customers to hurriedly and precipitately sign contracts for the application of respondents' cosmetic face peeling process and to make a partial or full payment therefor, without affording them a reasonable opportunity to consider and comprehend the scope and extent of the contractual obligation involved, the seriousness of the treatment involved, or the possibilities of discomfort, pain, disease or disfigurement related thereto.

PAR. 11. The respondents' acts and practices alleged herein are to the prejudice and injury of the purchasing public and constitute unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, and false advertisements disseminated by United States mails and in commerce in violation of Section 12 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereto with violation of the Federal Trade Commission Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondents Robert Sheldon, Beverlee Sheldon, also known as Beverlee Choate and Terry Lee Armas, III, are individuals trading and doing business as Rejuvenation Center, Ltd., with their office and principal place of business located at 8151 Broadway, Suite 110, San Antonio, Tex.

Respondents Robert Sheldon and Beverlee Sheldon, also known as Beverlee Choate, formulate, direct and control the policies, acts and practices of their business, Rejuvenation Center, Ltd. Terry Armas, III, assists in said business and, in many cases, applies respondents' chemical skin peel process to respondents' customers.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Robert Sheldon, Beverlee Sheldon, also known as Beverlee Choate, and Terry Lee Armas, III, trading and doing business as Rejuvenation Center, Ltd., individually, their successors or assigns and respondents' agents, representatives, employees either directly or through any corporate or other device, or through any franchisees or licensees, in connections with the offering for sale, sale, or distribution of any cosmetic chemical application resembling a chemo-surgical process of face lifting or face peeling or any other like process in commerce, as "commerce" is defined in the Federal Trade Commission Act, or by the United States mails within the meaning of Section 12(a)(1) of the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing directly or by implication that:

1. Any cosmetic process involving skin peeling or any other like process does not involve chemical surgery.
2. Any cosmetic process involving skin peeling is painless and involves no caustics or caustic chemicals.
3. The potential discomfort possibly resulting from the application of said cosmetic process is no more severe than that normally associated with a sunburn.
4. Any cosmetic skin-peeling process will permanently remove signs of aging.
5. Respondents are professionals in the field of medicine, or that any of them is a registered nurse, chemist or pharmacist.
6. Prospective clients should not seek medical advice

Decision and Order

83 F.T.C.

or have skin sensitivity or allergy tests conducted prior to receiving the skin-peeling process.

7. Said cosmetic process will cause their clients to appear any specific number of years younger than their actual chronological age.

8. Said cosmetic process is a procedure free from possible serious side effects or complications.

9. Said cosmetic process is widely accepted by the medical profession as performed by respondents.

10. Respondents are duly licensed to practice medicine or to prescribe or dispense drugs or cosmetics which by law may be prescribed or dispensed only by a doctor or pharmacist.

B. Advertising, offering for sale, selling or in any manner applying or dispensing any chemical skin-peeling process or treatment, or any other like process or treatment, unless respondents make clear and conspicuous disclosures in all advertising and in all oral sales presentations, that:

1. Any such chemical process or treatment involves a surgical procedure by which the upper layers of skin are burned chemically and are later peeled away.

2. Because of the chemical process resembling a chemo-surgical procedure, there is a probability of discomfort, pain, and a risk of infections, and permanent scarring.

3. Should the above-described side effects result, respondents are not professionals equipped nor trained to provide the necessary medical aid and attention to their clients.

4. Many cosmetic and plastic surgeons refuse to perform skin peeling procedures on the majority of those requesting the treatment due to the possibility of complications arising, and further that professional medical experts will perform such procedures on selected patients under clinical conditions only after a consultation and review of their medical history.

5. Respondents are not licensed to practice medicine or to prescribe or dispense drugs or cosmetics which by law may be prescribed or dispensed only by a doctor or pharmacist.

Respondents shall set forth the above disclosures separately and conspicuously from the balance of each advertisement or presen-

tation used in connection with the advertising, offering for sale, sale, or distribution of respondents' cosmetic process, and shall devote no less than 15 percent of each advertisement or presentation to such disclosures. *Provided however*, That in advertisements which consist of less than ten column inches in newspapers or periodicals, and in radio or television advertisements with a running time of one minute or less, respondents may substitute the following statement, in lieu of the above requirements:

Warning: This application involves a process resembling chemo-surgery whereby chemicals are applied to various parts of the body and skin is peeled away. Discomfort, pain, and medical problems may occur. Continuing care is necessary. Consult your own physician.

No less than 15 percent of such advertisements shall be devoted to this disclosure, such disclosure shall be set forth clearly and conspicuously from the balance of each of such advertisements, and if such disclosure is in a newspaper or periodical, it shall be in at least eleven point type.

It is further ordered, That respondents provide prospective clients with a separate disclosure sheet containing the information required in the immediately preceding paragraph of this order and that respondents require that such prospective clients, subsequent to receipt of such disclosure sheet, consult with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents regarding the nature of the surgery to be done, the probabilities of discomfort and pain, and risks of infection, and scarring.

It is further ordered, That no contract for application of respondents' cosmetic process shall become binding on the purchaser prior to midnight of the third day, excluding Sundays and legal holidays after the day of the purchaser's above-described consultation with a duly licensed physician who is not associated, directly or indirectly, financially or otherwise, with the respondents, or after the day on which said contract for application of the system was executed, whichever day is later, and that:

1. Respondents shall clearly and conspicuously disclose, orally prior to the time of sale, and in writing on any contract, promissory note or other instrument executed by the purchaser in connection with the sale of their process, that the purchaser may rescind or cancel any obligation incurred, by mailing or delivering a notice of cancellation to the office responsible for the sale prior to midnight of the third day,

Decision and Order

83 F.T.C.

excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician or after the day on which said contract for application of the system was executed, whichever day is later.

2. Respondents shall provide a separate and clearly understandable form which the purchaser may use as a notice of cancellation.

3. Respondents shall not negotiate any contract, promissory note, or other instrument of indebtedness to a finance company or other third party prior to midnight of the fifth day, excluding Sundays and legal holidays, after the day of the purchaser's above-described consultation with a duly licensed physician, or after the day on which said contract for application of the system was executed, whichever day is later.

4. Respondents shall obtain from each purchaser of their chemical skin peeling process or any other process in which caustic chemicals are applied to the skin, a certificate signed by the physician who was consulted as required by this order, such certificate specifying that the said physician has conducted skin sensitivity and allergic reaction tests appropriate to determine said purchaser's ability to undergo respondents' process, and specifying the date and approximate time of such consultation; further, respondents shall obtain from each purchaser as aforesaid, a signed and dated certificate stating that said purchaser has been informed by respondents of the nature of the chemical skin peeling process to be performed, and that he or she has been advised of the probabilities of discomfort and pain, and the risks of infection, and scarring; and respondents shall retain all such certificates for three years.

It is further ordered, That respondents serve a copy of this order upon each employee or agent participating in application of any process by respondents and obtain written acknowledgements for so long as such persons continue to participate in the application of said process.

It is further ordered, That respondents maintain files containing all inquiries or complaints from any source relating to acts or practices prohibited by this order, for a period of two years after their receipt, and that such files be made available for examination by a duly authorized agent of the Federal Trade Commission

during the regular hours of the respondents' business for inspection and copying.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further 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, signed by such respondents, setting forth in detail the manner and form of their compliance with this order.

IN THE MATTER OF

BERGEN BRUNSWIG CORPORATION

CONSENT ORDER, ETC. IN REGARD TO THE ALLEGED VIOLATION OF THE