

In the Matter of Indoor Tanning Association, File No. 0823159

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from the Indoor Tanning Association (“respondent”). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves the advertising and promotion of indoor tanning products and facilities. According to the FTC complaint, respondent represented, in various advertisements, that tanning, including indoor tanning, does not increase the risk of skin cancer. The complaint alleges that this claim is false and unsubstantiated because tanning, including indoor tanning, increases the risk of skin cancer, including squamous cell and melanoma skin cancers. Also, according to the complaint, respondent represented that: tanning, including indoor tanning, poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because, in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. The FTC complaint alleges that these claims are false and unsubstantiated.

The FTC complaint further charges that respondent represented that research shows that vitamin D supplements may harm the body’s ability to fight disease; and that a recent study in the prestigious Proceedings of the National Academy of Sciences determined that the risks of not getting enough ultraviolet light far outweigh the hypothetical risk of skin cancer, that getting a healthy tan produces vitamin D, and that increased vitamin D has been linked to significantly decreasing your risk of contracting internal cancers, such as lung, kidney, or liver cancer. The complaint alleges that these claims are false and misleading. The FTC complaint also alleges that respondent represented that tanning causes the skin to generate vitamin D and has health benefits, but that respondent failed to disclose facts that would be material to consumers in their purchase and use of indoor tanning services, specifically, that consumers can increase their vitamin D levels through ultraviolet levels lower than the amount needed to get a tan, and that ultraviolet radiation can injure the eyes and increases the risk of skin cancer. The complaint alleges that respondent’s failure to disclose these facts, in light of the representation made, is a deceptive practice. Finally, the complaint alleges that respondent provided to others the means and instrumentalities to engage in deceptive acts or practices.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts or practices in the future. The order covers representations made in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any covered product or service, in or affecting commerce. It does not cover representations made in non-commercial settings or contexts, such as communications to legislative or executive bodies. The order defines a covered product or service as any ultraviolet

lamp or sunlamp product, as defined in federal regulation 21 C.F.R. § 1040.20, or any commercial facility where consumers may use ultraviolet lamps or sunlamp products.

Part I of the order prohibits respondent from making the following representations: tanning, including indoor tanning, does not increase the risk of skin cancer; tanning, including indoor tanning, is safe or poses no danger; indoor tanning is approved by the government; and indoor tanning is safer than tanning outdoors because in indoor tanning facilities, the amount of ultraviolet light is monitored and controlled. The ban on representations that tanning, including indoor tanning, is safe, is fencing-in relief. Part II of the order prohibits respondent from misrepresenting (1) that research shows that vitamin D supplements may harm the body's ability to fight disease and (2) that a study in the Proceedings of the National Academy of Sciences determined: (a) that sun exposure does not cause skin cancer or melanoma, or that the risk of such cancer is only hypothetical; (b) that getting a tan is healthy; (c) that the risks of not getting enough ultraviolet light far outweigh the risk of skin cancer; or (d) that vitamin D has been linked to significantly decreasing the risk of contracting lung, kidney, or liver cancer.

Part III prohibits respondent from making any representation about the safety, health-related efficacy or performance, or health-related risks or benefits, of any covered product or service; or about the sources, performance, efficacy, or health-related risks or benefits of vitamin D; unless the representation is non-misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields to substantiate that the representation is true. For the purposes of the order, competent and reliable scientific evidence is defined as tests, analyses, research, studies, or other evidence that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and whose results are consistent with the body of reliable scientific evidence relevant to the representation. Part IV of the order prohibits respondent from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey, or research.

Part V of the order is a disclosure provision. It prohibits respondent from making any representation about the safety or health benefits of any covered product or service unless it makes the following disclosure, clearly and conspicuously, and in close proximity to the representation: “**NOTICE:** Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury.” In the event, however, that respondent represents that exposure to ultraviolet radiation produces vitamin D in the body, or otherwise about the effectiveness or usefulness of such product for generation of vitamin D, the required disclosure shall be as follows: “**NOTICE:** You do not need to become tan for your skin to make vitamin D. Exposure to ultraviolet radiation may increase the likelihood of developing skin cancer and can cause serious eye injury.”

Part VI of the order prohibits respondent from providing to any other person or entity any means or instrumentalities that contain any representation prohibited by the order. Part VII requires respondent to send a notice about the FTC's law enforcement action to all of its

members, and all other entities to which it provided point-of-sale advertising on or after January 1, 2008; the required notice is attached to the order as Attachment A.

Parts VIII, IX, X, and XI of the consent order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XII provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.