

IN THE MATTER OF

THE SILVER GROUP, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS. 5 &
12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3225. Complaint, April 13, 1988—Decision, April 13, 1988

This consent order prohibits, among other things, a San Francisco-based marketer of artificial tanning devices from misrepresenting that its devices do not pose for users a risk of any harmful side effect associated with sun exposure. Respondent is required to have reliable and competent scientific evidence for any health or safety claim it makes in any advertisement.

Appearances

For the Commission: *Brinley H. Williams.*

For the respondent: *Eugene I. Lambert, Covington & Burling, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Silver Group, Inc., a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a California corporation, with its office and principal place of business located at 379 Oyster Point Boulevard, South San Francisco, California.

PAR. 2. Respondent has advertised, offered for sale, sold and distributed tanning devices and related products for the artificial tanning of humans, including tanning beds, facial units, and overhead lamp systems, and other products to the public. Respondent's tanning devices are marketed under such trade names as Silver Solarium.

PAR. 3. The acts or practices of respondent alleged in this complaint have been in or affecting commerce.

PAR. 4. Respondent has disseminated and caused the dissemination of advertisements and promotional materials for its tanning devices published in magazines and broadcasted on television across state lines, and disseminated in product brochures and other sales literature directly to consumers or to distributors for display or distribution to consumers. Typical of respondent's advertisements, but not neces-

sarily all - inclusive thereof, are the attached Exhibits A through D. The aforesaid advertisements contain the following statements or depictions:

1. "new way to tan indoors with absolutely no harmful side effects associated with the sun." (Exhibit A)
2. "absolutely no burning, no drying and no sun damage." (Exhibit A)
3. "Silver system will tan you deeper and more safely than anything under the sun." (Exhibit B)
4. "SILVER SOLARIUM bans burns and sun damage to deliver the perfect tan." (Exhibit C)
5. "For the perfect tan, get the perfect solution to the sun, SILVER SOLARIUM." (Exhibit C)
6. "Safer Than The Sun!" (Exhibit A)
7. "Will my skin age faster? No. Unlike the sun, the harmful rays that cause elastosis are not present in the Silver System." (Exhibit D).

PAR. 5. Through the use of the statements and depictions referred to in paragraph four and others in advertisements not specifically set forth herein, respondent has represented, directly or by implication, that:

1. Use of respondent's tanning devices cannot contribute to skin aging.
2. Respondent's tanning devices can be used without the risk of any harmful side effect associated with the sun.
3. Use of respondent's tanning devices cannot increase the risk of skin cancer.

PAR. 6. In truth and in fact:

1. Use of respondent's tanning devices can contribute to skin aging.
2. Respondent's tanning devices cannot be used without the risk of any harmful side effect.
3. Use of respondent's tanning devices can increase the risk of developing skin cancer.

Therefore, the representations set forth in paragraph five were, and are, false and misleading.

PAR. 7. Through the use of the representations referred to in paragraphs four and five and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time it made the representations it possessed and relied upon a reasonable basis consisting of competent and reliable scientific evidence for said representations.

PAR. 8. In truth and in fact, respondent did not possess and rely upon a reasonable basis for making such representations. Therefore,

respondent's representations as set forth herein were and are false and misleading.

PAR. 9. In the advertising and sale of its tanning devices, respondent has, as alleged in paragraph four, used terms such as "safer than the sun" and "no harmful side effects" without disclosing that the use of such devices poses an increased risk of skin cancer and skin aging. These facts would be material to consumers. The failure to disclose these facts, in light of the representations made as alleged in paragraph five, is a deceptive practice.

PAR. 10. The acts and practices of respondent as alleged in this complaint, and the placement in the hands of others of the means and instrumentalities by and through which others may have used said acts and practices, constitute unfair or deceptive acts or practices in or affecting commerce and the dissemination of false advertisements in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

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Complaint

EXHIBIT A

For Immediate Release

Safer Than The Sun!

We've waged war on the sun and won! It's no longer necessary to spend long hours in the sun to tan. Silver Solarium's innovative tanning center introduces an entirely new way to tan indoors with absolutely no harmful side effects associated with the sun.

Consider the facts: Doctors world-wide are against the dangers of direct exposure of skin to sunlight. Too much sun burns, dries out and permanently damages the skin. The damage is done by ultraviolet rays emitted by the sun, particularly UV-B rays. UV-B rays work with UV-A rays to tan you by stimulating the melanin (pigmentation) in your skin. Too many UV-B rays cause burning and ultimately damage your skin. The problem is how to control the amount of UV-B rays while allowing the gentle UV-A rays to tan you.

The solution is to block out the burning UV-B rays. Sunscreens do it to a limited extent but skin damage still occurs. Silver Solarium's state-of-the-art tanning beds effectively filter out the burning UV-B rays while intensifying the healthful UV-A tanning rays. You'll tan faster and darker with absolutely no burning, no drying and no sun damage! Your tan will look better longer and so will your skin!

For more information visit the Silver Tanning Center nearest you:

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TRAINING TRAINING TRAINING

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EXHIBIT B

TRAINING TRAINING TRAINING

**Radio Ad
Silver Tanning Center**

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Here's something you really should know if you're searching for that perfect suntan! Doctors the world over warn constantly against over exposing your skin to sunlight! The sun sears, bakes and burns the skin. It adds wrinkles and creases, and even the finest sunscreens can't protect you from that! So how do you avoid skin damage? Drop into NAME. NAME takes you out of the sun and tans you in minutes, not hours! NAME, using the Silver system, will tan you deeper and more safely than anything under the sun. The Silver tanning system filters out the UV-B rays the sun emits, the rays that scorch the skin, and intensifies the UV-A rays that tan the skin! Want the perfect tan? Introduce yourself to the Silver tanning system at NAME! Or call NAME at PHONE NUMBER! That's NAME! There's nothing like it under the sun!

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EXHIBIT C

FACE FACTS

Silver Solumin works! It works better, safer and faster than the most sophisticated and effective sunscreens. Tanning in the sun without a sunscreen causes damage. Burning UVB rays tear the skin resulting in painful sunburns and premature aging and wrinkling. Sunscreens can help block (reflect) the burning rays but skin damage still occurs. SILVER SOLARUM bans burns and sun damage to deliver the perfect tan. SILVER effectively screens out the burning UVB rays inside the tubes. At the same time the gentle UVA tanning rays are immediately for the deepest, richest tan ever! For the perfect tan, get the perfect solution to the sun. SILVER SOLARUM.



HOW IT WORKS

You'll see the results after your first session, and after six to eight half hour sessions you'll be sporting a glorious tan. Now, it's important to remember this is not an artificial tan. The light from the machine is stimulating your body's natural tanning ability. Each person has a different amount of pigmentation in their skin. You'll find yourself tanning at a different rate than your friends or spouse. This is quite normal. People with dark complexions will tan faster than those who have a fair complexion. However, even most people with red hair and freckles will tan many times it's their first tan ever! To maintain your tan, one to two sessions weekly should suffice. Depending on how dark you want to be, more or fewer sessions may be taken.

THE SILVER SYSTEM AND YOU

1. Will I burn?

No. The system is designed to stimulate your body's natural tanning ability without causing any burning.

2. Will all people get the same tan in the same number of sessions?

No. Skin tans at its own rate and all skin types are different. Generally the fairer your complexion the longer it takes to tan. However, feel comfortable, you will not burn. For many people it is the first tan of their life. With olive skin you'll look fabulous.

3. Do I need to use sunscreens, oils or moisturizer?

No. It's not necessary. Just maintain your regular skin care routine. Do not under any circumstances use sunscreens, it serves no purpose and only damage the tanning equipment.

4. How long will it take to get a tan?

You'll see the results after your first session. To get a good base tan schedule 4-6 consecutive sessions. Then 1 or 2 sessions weekly will maintain your tan.

5. How long does a session last?

An average of 20-25 minutes. Scheduling for your session is very important. Please be on time to utilize your entire session.

6. Will it help my holiday tan if I use it before I go on holiday?

Yes, because you will go with a tan, instead of milky white skin. However, we strongly encourage you to use a very good sunscreen to protect your skin from sun damage while outdoors.

7. Will my skin get an aged weathered look like it does in the sun?

Sunscreens are designed to control the damaging effects of sun can cause. And Silver Solumin is more effective than sunscreens. It is considered the ultimate sunscreen.

8. Can I take medications in conjunction with tanning?

There are some medications which are considered to be photo sensitive. For complete listing consult your physician. Common light sensitive drugs include Tetracyclines, Phenothiazines, and heart medications.

Money Back Guarantee.

Join any of the different plans available. And if you are not completely satisfied after your session, your money will be refunded.

EXHIBIT D



silver solarium

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Your skin deserves careful attention and protection. That's why you should know all about the tanning effects of ultraviolet rays — those of the sun as well as those of man-made light. Both can be either harmful or very beneficial.

We feel confident that the more you know, the better you'll feel about the Silver Solarium.

The Silver System, Ultraviolet Light, and Your Health

The life-sustaining sun dispenses light, heat and ultra-violet rays to every living thing on earth. The light controls life's rhythm — day and night. Heat rays create the vital temperature changes that make up our climate, and stimulate the metabolic functions. And the UV rays stimulate the life processes and, in men, if the combination is right, produces a healthful, aesthetic tan.

All living creatures need the energy of the sun. A lack of sun can lead to illness in man and an unhealthy degenerative appearance. But too much sun is also damaging. Who has not experienced a red, uncomfortable sunburn? The UV-B rays (short as well as made range) are responsible for this condition. UV-B rays do have numerous positive features — they stimulate the metabolic functions, improve the quality of the blood through increased production of red corpuscles, make respiration more efficient and make one more resistant to infection. For these health supporting effects, a minimal dosage of UV-B is mandatory and sufficient. When overexposed leads to sunburn, a drying of the skin, a small amount of UV-B is essential to life and to obtaining a tan. The trick, up to now, has been how to get just the right amount of UV-B to the body — enough for the benefits of health and tanning but not enough to burn. The Silver System has achieved this goal.

How Tanning Occurs

In the skin, composed of epidermis, dermis and endodermis, there are special cells called melanocytes. These cells are unevenly distributed over the body and are activated by the short UV-B rays to produce pigmentation — melanin. It is these particles of pigmentation which, when they encounter the proper intensity of UV-A light, oxidize and produce the desired brown color for a tan.

Therefore, it takes a small amount of UV-B to start the process of tanning and a far greater amount of UV-A to produce the tan. This is exactly the output of the Silver UV-A Tanning System. The long UV-A rays are gentle. They tan without burning. Only an extremely high dosage of UV-A, a dosage that is practically impossible with our system, could result in even a mild sunburn. It is natural for a tan to fade. The pigment particles naturally rise to the surface and are shed with the skin's cells. To maintain a tan permanently UV exposure must be repeated at certain intervals. Depending on the individual one or two times a week. The Silver Tanning System does this.

The Silver System vs. The Sun

The Silver System emits the same type of rays as the sun, and we've improved on nature's own tanning process.

Due to its energy spectrum, natural sunlight is unable to tan the skin without the risk of sunburn. For every part UV-B (burning rays) about 100 parts UV-A (tanning rays) reach the same area.

The Silver vs. The Tanning Booth

Until now the only way to get an indoor "tan" was the sunbooth. These systems give off 60 times more UV-B than the Silver System. If you stand in a booth too long, even a couple of minutes, it means the difference between a healthy "tan" and a painful sunburn.

With the Silver Tanning System you lie down. The subtle warmth from our lamps soothes your body. Within a few short treatments, you'll have a beautiful golden tan, without the fear of sunburn.

Pre-Vacation Skin Protection

The Silver System will also help you enjoy a sun-filled vacation because pre-tanned skin is its own best protection. No need to arrive pale and then suffer through the first week with the discomfort of sunburn. As few as four 20 minute sessions will protect you and are probably the best insurance for a truly pleasurable vacation.

Money Back Guarantee

Join any of the different plans available. And, after your first session if "Total-and-not-completely" satisfied your money will be refunded.

The Silver System, and You

1. Will the Silver System cause sunburn under normal use?
No.
2. Will all skin types react the same?
Sun types tan at different rates.
3. Do I need to use oils or moisturizers?
No, it's not necessary.
4. How long does a treatment last?
20-25 minutes depending on your complexion.
5. How often can I use the machine?
One treatment a day for 4 days, then 1 or 2 times per week to maintain your tan.
6. Will it help my holiday tan if I use it before I go on vacation?
Yes. Avoid painful sunburn during the first days of vacation in the sun.
7. Will it help me keep my vacation tan after I'm back?
Yes. A one or two treatment per week maintenance program will help you keep your tan.
8. Do I have to protect my eyes?
We recommend that you do.
9. Will my skin age faster?
No. Unlike the sun, the harmful rays that cause discoloration are not present in the Silver System.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent 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 thereafter considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent The Silver Group, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California. The Silver Group has its offices and principal place of business at 379 Oyster Point Boulevard, South San Francisco, California.

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

ORDER

DEFINITION

For the purpose of this order, the following definition shall apply:

"Tanning device" means any product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body by ultraviolet radiation to induce skin tanning.

I.

It is ordered, That respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting directly or by implication that:

- a. Use of any such device does not pose a risk of the harmful side effects associated with exposure to the sun's radiation;
- b. Use of any such device does not increase the risk of developing skin cancer;
- c. Use of any such device does not contribute to skin aging.

II.

It is further ordered, That for one year after the date of service of this order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to prominently disclose in any print advertisement, film, video tape or any other promotional material the following statement:

NOTICE - Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photo-sensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

III.

It is further ordered, That commencing one year after the date of service of this order respondent The Silver Group, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making in any print advertisement, film, video tape or any other promotional material any representation, directly or by implication, that the tanning device is safe or safer than other devices or methods of tanning or that the device has health benefits unless the following statement is given:

NOTICE - Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photo-sensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

IV.

It is further ordered, That respondent The Silver Group, Inc., its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making directly or by implication, any health or safety representation, unless, at the time of such representation, respondent possesses and relies upon a reasonable basis for each such representation, consisting of reliable and competent scientific evidence that substantiates such representation; provided however, that to the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of profes-

sionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

V.

It is further ordered, That respondent shall distribute a copy of this order to each current officer, employee, agent and or representative having sales or promotional responsibilities with respect to the subject matter of this order, and to each current dealer, distributor and purchaser or lessee for commercial use, of its tanning devices, such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers. A dealer, distributor, purchaser, or lessee is "current" for purposes of this paragraph if it holds a device on consignment for sale; purchased a device for resale or other commercial purpose within the two-year period preceding service of this order; received from respondent, within that two-year period, either directly or indirectly, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support; or leases a device for commercial purposes from respondent.

VI.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent, its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys, or other materials in its possession or control or of which it has knowledge that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation, including complaints from consumers.

VII.

It is further ordered, That for ten (10) years after the date of service of this order respondent, its successors and assigns shall maintain for

three (3) years from the last date of dissemination of the material a copy of each nonidentical form of promotional and training material disseminated by respondent and upon request make such material available to the Federal Trade Commission or its staff for inspection and copying.

VIII.

It is further ordered, That for ten (10) years after the date of service of this order respondent, its successors and assigns shall maintain for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor and purchaser or lessee for commercial use of respondent's tanning devices to whom respondent provided, directly or indirectly through a distributor or other representative, any promotional or advertising material for the sale or other commercial use of the devices or to whom respondent directly or indirectly provided financial advertising support.

IX.

It is further ordered, That respondent, its successors and assigns, shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

X.

It is further ordered, That respondent shall, within sixty (60) days after service of this order upon it and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this order.

Commissioner Bailey not participating.

Complaint

110 F.T.C.

IN THE MATTER OF
VOLKSWAGEN OF AMERICA, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9154. Complaint, April 1, 1981—Decision, April 13, 1988

This consent order requires, among other things, a Troy, Mich. automobile company to offer an arbitration program to owners of certain Volkswagen and Audi automobiles with faulty valve seals and other oil consumption-related problems.

Appearances

For the Commission: *Robert M. Doyle.*

For the respondents: *Herbert Rubin, Herzfeld & Rubin, P.C., New York City.*

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 Volkswagen of America, Inc., a corporation subject to the Commission's jurisdiction, hereinafter sometimes referred to as respondent VWoA, and Volkswagenwerk Aktiengesellschaft, a corporation subject to the Commission's jurisdiction, hereinafter sometimes referred to as respondent VWAG, 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:

PARAGRAPH 1. Respondent Volkswagen of America, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business located at 27621 Parkview Road, Warren, Michigan. Respondent VWoA is a subsidiary of respondent VWAG.

Respondent Volkswagenwerk Aktiengesellschaft is a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its principal office and place of business located at 3180 Wolfsburg, West Germany. VWAG dominates or controls the acts and practices of its subsidiary, respondent VWoA.

PAR. 2. Respondent VWoA is now and has been engaged in the